

ORIGINAL

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEVEN C. DEMOCKER, )  
 )  
Defendant. )  
\_\_\_\_\_ )

No. P 1300 CR 2008 - 1339

BEFORE: HONORABLE THOMAS B. LINDBERG  
JUDGE OF SUPERIOR COURT  
DIVISION SIX  
YAVAPAI COUNTY, ARIZONA

EVIDENTIARY HEARING  
NOVEMBER 3, 2009

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November 3, 2009  
1:30 p.m.

EVIDENTIARY HEARING

APPEARANCES:

FOR THE STATE, MR. JOSEPH BUTNER.

FOR THE DEFENDANT, MR. JOHN SEARS AND MR. LARRY  
HAMMOND.

THE COURT: This is the continuation of the  
hearing that we previously began. Mr. Echols is still on  
the stand. You are still under oath, Mr. Echols.

So Mr. Sears, Mr. Hammond are here. The  
defendant is here. Mr. Butner is here. We are still on  
direct, Mr. Butner.

MR. BUTNER: Judge, I thought we are on  
cross.

THE COURT: Oh, were we on cross? Excuse  
me.

MR. BUTNER: Mr. Sears was beating Mr.  
Echols up one side and down the other.

THE COURT: Mr. Sears, you may proceed.

MR. SEARS: Do I have to go in -- do I still  
have to go up one side and down the other?

THE COURT: Whatever direction you choose  
to.

CROSS EXAMINATION

BY MR. SEARS:

Q. Good afternoon, Mr. Echols.

1 A. Good afternoon.

2 Q. I want to go back a bit, if I could, and talk  
3 with you a little bit about your background and experience  
4 and qualifications to do this work. I have gone back and  
5 looked at your CV that was disclosed to us some time ago  
6 and looked at what I could over the weekend about some of  
7 the organizations that you belong to.

8 Am I right in understanding that you became  
9 a Certified Fraud Examiner in 2007?

10 A. October of 2007. Yes, sir.

11 Q. Just a little over two years ago?

12 A. Yes, sir.

13 Q. And that's with an organization called the  
14 Association of Certified Fraud Examiners?

15 A. That's correct.

16 Q. And are you currently a member in good standing  
17 of that organization?

18 A. Yes, sir.

19 Q. And in looking at their website, they had a  
20 considerable amount of information that was available to  
21 the public about qualifications and experience and  
22 background. One of the things I noticed was that although  
23 they suggested that members have at least a bachelors  
24 degree in a related field, they would allow a person to  
25 substitute practical experience for a formal degree.

1                   Is that your understanding?

2           A.     That's my understanding, yes.

3           Q.     And that there was an examination that is part of  
4 the application process, is that right?

5           A.     That is correct.

6           Q.     And it looked like at least currently the exam is  
7 500 questions and it's offered online over the Internet,  
8 correct?

9           A.     There's five parts to that exam. My recollection  
10 was there was 150 questions in each of those five. So it  
11 would probably be more than 500. But, yes, that's  
12 correct. And the exam can be administered online, yes.

13          Q.     Which would mean, of course, for whoever was  
14 taking it online, it could be an open book exam?

15          A.     Under time constraints, yes, that's correct.

16          Q.     The organization looks like it makes an active  
17 effort to publicize the availability of its members to  
18 perform fraud examinations, correct?

19          A.     I believe so. I'm not positive, but I believe  
20 so.

21          Q.     Because, frankly, we looked on the website and we  
22 put your name in and couldn't find Richard Echols on their  
23 database. We found an Andy Echols, but not a Richard  
24 Echols.

25                   Have you ever looked for yourself on that

1 database?

2 A. No, I haven't. But I believe I have a card in my  
3 pocket, if would you like to see it.

4 Q. If you said here under oath that you are a  
5 member, that's good enough for me.

6 A. Yes, sir. I am.

7 Q. Now, you were also apparently sometime this year  
8 certified in financial forensics, is that right?

9 A. That's correct.

10 Q. By what agency?

11 A. American Institute of Certified Public  
12 Accountants. That's a new designation by the AICPA.

13 Q. Was there a written examination in connection  
14 with that?

15 A. No, sir.

16 Q. What were the qualifications that you had to  
17 submit in order to be certified in financial forensics?

18 A. You had to submit your work product over your  
19 period of being a professional. You had to demonstrate to  
20 them the work that was performed, the continuing education  
21 that you have received. You had to give them a thorough  
22 explanation of the type of work product that you performed  
23 and why you would qualify for that particular designation.

24 You had to score so many points to be  
25 awarded that.

1 Q. Similar to the point system that the Association  
2 of Certified Fraud Examiners --

3 A. Similar.

4 Q. -- applies?

5 A. Similar. Yes, sir.

6 Q. Basically points that combine education and  
7 experience and other skills?

8 A. Yes, sir.

9 Q. Can you tell me the periods of time in which you  
10 maintain an active CPA practice here in Arizona?

11 A. I began my practice in -- I was actually working  
12 for a CPA firm doing accounting work prior to my  
13 graduation from Arizona State in 1974.

14 I continued in that same practice until 1995  
15 when I sold that practice and went to work for the City of  
16 Phoenix. I continued to do some accounting work on the  
17 side as I worked for the City of Phoenix and eventually  
18 when I went out to Missouri, I continued my professional  
19 practice in Missouri.

20 Q. When you say you worked for the City of Phoenix,  
21 that was as a police officer, right?

22 A. That's correct.

23 Q. So after 20 plus years as a CPA, you had a pretty  
24 major career shift, is that right?

25 A. Well, you might consider it major. The reason I

1 switched and went to the City of Phoenix is because I had  
2 a particular like for and expertise in fraud exams and so  
3 the City of Phoenix courted me to be able to come to work  
4 to head up some of their fraud detail.

5 Q. And you worked there how many years?

6 A. About three years.

7 Q. And then moved to Missouri?

8 A. Yes, sir.

9 Q. And when did you return to Arizona?

10 A. 19 -- excuse me. 2006.

11 Q. And your resumé indicates that you have  
12 maintained a small accounting practice. Do you still have  
13 that practice?

14 A. No. Not here in Arizona, no. I still do some  
15 tax returns out of my office in Missouri, but not in  
16 Arizona.

17 Q. So you don't have any current Arizona clients?

18 A. No.

19 Q. When was the last time you did actually prepare  
20 Arizona tax returns for Arizona clients?

21 A. Probably the last year. Well, I am still doing  
22 some, but they are being done out of my Missouri office;  
23 not an Arizona practice.

24 Q. So you haven't stopped pretty much?

25 A. I guess technically I haven't stopped.

1 Q. Let's talk about the assignment you got in this  
2 case. By whom were you contacted to begin work in this  
3 case?

4 A. Yavapai County Sheriff's Office contacted Rocky  
5 Mountain Information Network and requested some assistance  
6 in the evaluation of financial matters in a case. That  
7 case was turned over to me and then I contacted -- I  
8 believe it was Detective Brown and started responding to  
9 their requests.

10 Q. Do you know when the contact between the  
11 Sheriff's Office and RMIN was first made?

12 A. No, sir. I don't remember the exact date. It's  
13 been about a year. I can find that date, but I don't have  
14 that with me.

15 Q. And can you tell me how long after that first  
16 contact it was that you were actually assigned to the  
17 case?

18 A. I believe I was assigned to the case immediately  
19 upon them contacting RMIN.

20 Q. So it's been approximately a year?

21 A. Yes, sir. About a year.

22 Q. Tell me who you have spoken with about this case.

23 A. Everybody that I have spoken to about this case?

24 Q. Please.

25 A. Detective Brown. The sergeant in that office; I

1 am not sure of his name. The lieutenant in that office; I  
2 am not sure of his name. Mr. Ainley. Joe Butner. Deb  
3 Crowl. (Phonetic spelling.) There are a number of  
4 investigators with the Yavapai County Sheriff's Office  
5 that have been a part of the meetings that I have been in.

6 Interviews with Mr. Doug Raider,  
7 Mr. Wheeler, Mr. Thornburrow with A.G. Edwards,  
8 Mr. Sturgis Robinson, Richard Auch, Mr. Van Steenhouse.  
9 Financial advisor Twila Graham. The attorney for UBS; his  
10 name escapes me.

11 A number of administrative assistants at the  
12 Yavapai County Sheriff's Office.

13 In my office, my assistants, Debbie  
14 Caspersac, Carly Weeks, who are just my assistants for  
15 moving paperwork in my office. My supervisor, Cindy Irby.  
16 Her supervisor, Mark Fritz. The Deputy Director, Jeff  
17 Pierce. The director, John Vincent. And I'm sure I have  
18 missed some.

19 Q. The people that you indicated from UBS  
20 particularly, but also Doug Raider and those people, were  
21 those interviews that you actually attended and  
22 participated in?

23 A. Yes, sir.

24 Q. Did you speak with any of those individuals on  
25 the telephone?

CHRISTINE ANNE HARRINGTON

AZ CR#50128

1 A. Yes, sir.

2 Q. In addition to seeing them in person?

3 A. Yes, sir.

4 Q. And have you made notes of all of your work in  
5 this case? I know that you have here three notebooks.

6 Are you the kind of investigator that takes  
7 notes and keeps notes?

8 A. There weren't a whole lot of notes because most  
9 of the interviews we did were taped and I have copies of  
10 those that I can refer to. There are some notes, yes.

11 Q. Where are those notes maintained?

12 A. In my office.

13 Q. They are not in those binders?

14 A. Most of them would be in these binders, yes.  
15 There may be a few more notes in my office, but most of my  
16 notes are here.

17 Q. You work out of an office in Maricopa County?

18 A. Yes, sir.

19 Q. Do the other people that you described in the  
20 chain of command above you also work out of Maricopa  
21 County?

22 A. Yes, sir. Same office.

23 Q. All in the same office?

24 A. Yes, sir.

25 Q. Where is that office located?

1 A. 2001 West Pinnacle Peak Road in Phoenix.

2 Q. And when you testified last week, you said a  
3 number of times that we have been doing work on the case.

4 May I assume that the "we" you are referring  
5 to are the people at RMIN that you talked about?

6 A. Yes. The only -- the "we" would have referred to  
7 the two people in my office that would occasionally help  
8 me in sorting documents, etcetera.

9 Q. Have any of the other staff at RMIN worked on  
10 your part of this investigation other than your own  
11 personal assistants?

12 A. No, sir.

13 Q. Do you know whether or not RMIN is undertaking  
14 other work for Yavapai County in connection with this case  
15 other than the financial work that you have undertaken?

16 A. Not that I am aware of.

17 Q. I have been given in disclosure a four-page  
18 report that you apparently authored dated September 25,  
19 2009. Is this the only report of any kind that you have  
20 generated in this case?

21 A. Yes, sir.

22 Q. Have you sent any written materials, letters,  
23 E-mails, memos to either the Yavapai County Attorney's  
24 Office or the Yavapai County Sheriff's Office about your  
25 work in this case?

1 A. Yes.

2 Q. Where are those kept?

3 A. I don't know that those are kept. They may be  
4 retained on our server, but I'm not aware of that.

5 Q. You wouldn't routinely print hard copies and put  
6 them in your file?

7 A. No, because I don't typically send information of  
8 notes or evidentiary nature on an E-mail. My  
9 correspondence through E-mail or through telephone calls  
10 would basically be a clarification of what I was looking  
11 at or a request for additional documentation.

12 Q. Then have you prepared written reports or memos  
13 and sent them through ordinary mail or some other more  
14 traditional means of communication other than over the  
15 Internet to either the Sheriff's Office or the County  
16 Attorney's Office?

17 A. No, sir. Other than four-page document that you  
18 referred to, all of my communication concerning what I had  
19 done and what my work product that was done in person  
20 verbally here in Prescott.

21 Q. Have you ever been denied any license or  
22 membership in any organization in connection with your  
23 professional work?

24 A. No.

25 Q. Have you ever failed any written examination in

1 connection with your professional work?

2 A. No.

3 Q. All right. Let's talk about this case then, if  
4 we could, Mr. Echols. And let's talk a little bit, if we  
5 could now, about Mr. Democker's financial condition on the  
6 day Carol Kennedy died, July 2nd, 2008.

7 Did I understand you to say last week that  
8 you had not prepared any sort of detailed analysis of Mr.  
9 Democker's precise financial position as of that date?

10 A. As of June 2nd?

11 Q. July 2nd.

12 A. Excuse me. July 2nd. Yes, sir. I indicated  
13 that we were in the process of preparing, but we were  
14 missing some documents that we were waiting for by  
15 subpoena; so we had not completed that work.

16 Q. You said though, however, on direct examination  
17 that Mr. Democker -- and I don't want to unfairly  
18 paraphrase what you said -- but my sense was that you  
19 said that he was deeply in debt on July 2nd, 2008, is that  
20 right?

21 A. Yes, sir.

22 Q. Tell me what debts he had on July 2nd.

23 A. I believe the debts that I would have been  
24 referring to was the monthly debt that he had indicated to  
25 the court that he was paying for the maintenance of his

1 family. Those are the debts that I was referring to.

2 Q. Okay. My question though is not what his  
3 financial position was before May 28th, 2008. My question  
4 was aimed at what his financial position was after the  
5 divorce on the date that Carol Kennedy died.

6 My question is: What debts did he have on  
7 July 2nd, 2008?

8 A. He would have still had the debts for both of the  
9 houses. Excuse me. For his house, and potentially for  
10 the other house that there was some discussion about  
11 whether or not he was going to take.

12 He would have continued to have the debt for  
13 his employee forgivable loan.

14 Q. The debt being the taxes?

15 A. The debt being the deferred revenue that was yet  
16 to be reported and the taxes on that debt, yes. The  
17 liability associated with it.

18 Q. Okay.

19 A. As well as his continuing responsibility to  
20 provide for his family, which was typically what I meant  
21 by the debts that he had at that time.

22 Q. Let's try to be more precise, if we can, Mr.  
23 Echols.

24 You would agree, would you not, that on July  
25 2nd, 2008, Steve Democker was not principally responsible

1 for either of the mortgages on the Bridle Path residence  
2 awarded to Carol Kennedy in the divorce?

3 A. I would agree with that.

4 Q. You would agree that Steven Democker's  
5 obligations to Carol Kennedy on July 2nd had changed after  
6 the divorce and were now limited to \$6,000 per month in  
7 spousal maintenance due on the first of each month,  
8 correct?

9 A. I agree with that, yes.

10 Q. Steve Democker had no obligation to pay Carol  
11 Kennedy's attorney's fees from the divorce, did he?

12 A. Not to my knowledge.

13 Q. Steve Democker had no obligation to pay any of  
14 Carol Kennedy's costs or expert fees in connection with  
15 the divorce, did he?

16 A. I don't believe he did.

17 Q. Part of the divorce settlement contemplated that  
18 a 401(K) from UBS would be transferred to Carol Kennedy  
19 through a qualified domestic relations order, is that  
20 correct?

21 A. That's correct.

22 Q. The divorce decree further provided that after  
23 the taxes were withheld, that Carol Kennedy was obligated  
24 to use some of that money to pay off certain community and  
25 joint debt, correct?

1 A. That's correct.

2 Q. And you are aware, aren't you, that when the  
3 401(K) was transferred pursuant to that QDRO, UBS withheld  
4 a significant portion for taxes?

5 A. That's correct.

6 Q. And that the net amount to Carol Kennedy that  
7 went into her checking account in June of 2008 was  
8 something more than \$140,000, correct?

9 A. Slightly more than that, yes.

10 Q. So the taxes on that transfer had been paid,  
11 correct?

12 A. No.

13 Q. You don't think the withholding was sufficient?

14 A. Absolutely not.

15 Q. How much was withheld?

16 A. 36,000.

17 Q. And Carol Kennedy had how much in joint community  
18 debt to pay off from that \$140,000 plus that she received?

19 A. My recollection was she was paying off the Chase  
20 credit card, which I believe was somewhere around 40,000.  
21 She was paying \$20,000 on the UBS Visa card. And I  
22 believe she was paying the other credit card and it seems  
23 to me like it was around 25 to 30,000.

24 I am not exactly sure of those figures.

25 Q. Well, you made some pretty sweeping statements

1 here last week about the financial positions of both Carol  
2 Kennedy and Mr. Democker as a possible motive for Mr.  
3 Democker deciding that he needed to murder her, correct?

4 A. I don't think I'd characterized my statement as  
5 pretty sweeping statements, no.

6 Q. On your report, page four: "We feel the facts  
7 presented show a significant motive for Mr. Democker to  
8 want to prevent Carol Kennedy from taking back him to  
9 court as exposure of conviction is great and the resulting  
10 consequences disastrous."

11 Those are your own words, correct?

12 A. Those are the original words in my report, yes.

13 Q. You also said last week that Mr. Democker was  
14 deeply in debt and was pressured further by Carol  
15 Kennedy's continuing demands for more money even after the  
16 divorce, correct?

17 A. Correct.

18 Q. Now, I asked you to tell me -- to tell Judge  
19 Lindberg precisely what Mr. Democker's financial situation  
20 was on July 2nd, 2008.

21 A. Okay. I can do that. Can I refer to some of my  
22 records?

23 Q. You bet.

24 A. Mr. Democker submitted to the court on  
25 January 1st -- excuse me. January 31st, 3008 (sic) --

1 Q. Excuse me. My question is: His financial  
2 condition as of July 2nd, 2008.

3 A. I am going to explain that to you.

4 Q. Okay.

5 A. Mr. Democker submitted to the court January the  
6 31st, 2008 a detailed schedule of what his monthly  
7 expenses were. So we knew exactly what he was paying on  
8 each of the expenses with respect to his family.

9 We took that report, we subtracted from that  
10 report the expenses that would have been attributable to  
11 Carol. That is, that were directly attributable to her  
12 care. Those things that would have been removed after the  
13 divorce and then attempted to see what the outflow of cash  
14 would be; given that we take those expenses away.

15 We found that his expenses -- total expenses  
16 for that period of time by Carol removing those expenses  
17 that were attributable to her, the payments to the cards,  
18 her house payment, her car payment, the other things that  
19 were listed on his report.

20 We found that when we removed those  
21 expenses, there was actually less removed than what was  
22 replaced with the \$6,000 that he was paying in spousal  
23 maintenance. Therefore, his outflow was the same as what  
24 it was in the previous period.

25 So if you take the fact that his income had

1 a 30 percent drop, his expenses remained the same and he  
2 was already --

3 Q. Mr. Echols, if you'd just kind of stick to my  
4 question here. My question was: What was his financial  
5 position? I didn't ask you to offer opinions yet about  
6 whether he could meet those expenses.

7 Why don't you give us an itemization of the  
8 expenses that you believe Mr. Democker still had on  
9 July 2nd, 2008.

10 A. They are listed on that report.

11 Q. Which report?

12 A. The report of January 31st, 2008. He identified  
13 for us every expense that he had on a monthly basis.

14 Q. Why don't you read them back to me.

15 A. Starting with Service of Joint Debt and Other  
16 Community Obligations; \$9,797.

17 In the category --

18 Q. That's called Service of Community and Joint  
19 Debt?

20 A. Service of Joint Debt and Other Community  
21 Obligations.

22 Q. And which ones are those?

23 A. UBS 401(K) loan. EFL loan number one. There is  
24 ten items here. You want me to read them all?

25 Q. Let's -- I guess \$9,777?

1 A. \$9,797.

2 Q. \$97.00. Okay. And what amount is attributable  
3 to repayment of the 401(K) loan?

4 A. 1,056.

5 Q. Is that monthly?

6 A. Correct.

7 Q. Okay.

8 A. EFL loan number one.

9 Q. Okay.

10 A. \$2,834. EFL two, taxes; \$77.00.

11 Q. \$77.00?

12 A. Yes, sir.

13 Q. Okay.

14 A. Bank of America Visa; \$369.00.

15 Q. Okay.

16 A. UBS Card Services, Visa; \$1,063.

17 Q. Okay.

18 A. Chase Master Card; \$1,067.

19 Q. Okay.

20 A. BMW 550-I lease contract; \$1,098.

21 Q. Yes.

22 A. Mojila (phonetic) Parent Plus loan before  
23 petition --

24 THE COURT: I'm sorry. Run that again.

25 A. Mojila Parent Plus loan before petition; \$254.00.

1 Q. Okay.

2 A. Occidental tuition account; \$1,161.

3 Q. Okay.

4 A. Hassayampa Country Club contract 52008; \$500.00.

5 State Farm liability umbrella, Bridle Path; \$37.00.

6 Hartford term life insurance; \$281.00.

7 That comes to a total of \$9,797.

8 Q. Okay.

9 A. Second category. For Carol's direct support,  
10 excludes mortgages; \$5,113.

11 Broken down as follows: Provident Funding,  
12 Bridle Path first mortgage; \$2,784. M&I Bank, Bridle Path  
13 second mortgage; \$600.00. ETNA medical insurance;  
14 \$112.00. Cigna dental insurance; \$10.00. State Farm auto  
15 insurance; \$93.00. Flame Propane; \$370.00. APS; 210.  
16 Qwest; 67. Cable One; 102. Northern Arizona Waste  
17 Management Patriot Disposal; 65. Temporary support  
18 payments; 700.

19 That's the total of \$5,113.00.

20 Q. Okay.

21 A. Next category for Charlotte's full-time care;  
22 \$2,053 total.

23 Broken down in the following categories:  
24 ETNA medical insurance; \$112.00. Cigna dental insurance;  
25 \$10.00. Unreimbursed medical and dental expenses; 74.

1 State Farm auto insurance; 287. Car maintenance and MVD  
2 registration; 160. Groceries and household supplies; 250.  
3 Payments to MBA account for food and personal care; 271.

4 Q. Which account was that?

5 A. Payments to MBA account for food and personal  
6 care.

7 Q. Okay.

8 A. Allowance for additional food and entertainment;  
9 \$100. Books and extracurricular educational expenses;  
10 \$234. Clothing and personal supplies; 187. Cell phone  
11 and cell service; 368.

12 Which comes to a total of 253 per month.

13 Next category --

14 THE COURT: 2,053.

15 THE WITNESS: I'm sorry. Two zero five  
16 three.

17 THE COURT: Thank you.

18 THE WITNESS: Uh-huh. Next category is for  
19 Katie's full-time care, including college.

20 First item -- that total amount is \$3,540.

21 Broken down as follows: Payments to B of A  
22 account for food, gas and books; \$582. BMW Financial  
23 Services Lease; \$747. State Farm auto insurance; \$287.  
24 Car maintenance and MVD registration; \$94. Theta dues;  
25 \$150.00.

1 Q. Can you spell that?

2 A. T-H-E-T-A.

3 Q. Thank you.

4 A. Alumni Avenue rent; \$960. ETNA medical  
5 insurance; \$112.00. Cigna dental insurance; \$10.00.  
6 Unreimbursed medical and dental expenses; \$53. Clothing  
7 and personal care; \$177. Cell phone and cell service;  
8 \$368.

9 That would come to a total of 3,540.

10 Next category: For Steve's sole living  
11 expenses; total amount \$7,559.

12 Broken down follows: Washington Mutual  
13 townhouse first mortgage; 1,517. National City townhouse  
14 second mortgage; \$515. American Express; \$971. ETNA  
15 medical insurance; \$235. Cigna dental insurance; \$30.00.  
16 Unreimbursed medical and dental expenses; \$1,295.  
17 Long-term disability expenses; 219. State Farm auto  
18 insurance; 101. UniSource; 93. APS; 134. Qwest; 65.  
19 Cable One; 69. Verizon; 180. Dish; 70. Hassayampa HOA  
20 fees and city assessments; 283. Household repairs and  
21 maintenance; 110. Tax preparation; 42. Groceries and  
22 household supplies; 450. Business clothing; 330.  
23 Additional clothing; 125. Dry cleaning for business  
24 clothes only; 110. Car maintenance and MVD registration;  
25 130. Fuel for personal use; 200. Plan USA Child Reach

CHRISTINE ANNE HARRINGTON

AZ CR#50128

1 Sponsorships; 285.

2 That should be a total of 7,559.

3 Next category: For Steve's unreimbursed  
4 business expenses. That total will come to \$2,002.

5 Broken down as follows: Number one, PDA;  
6 67. Computer and cell phone; 171. Cable One; 69.  
7 Assistant's salary subsidies; 305. Other unreimbursed;  
8 230. Fuel for business travel; 405. Paid through pre-tax  
9 salary deferrals and the business builder account; 1,250.  
10 Minus tax savings on salary deferrals of a negative \$495.

11 That was the total of \$2,002.

12 When you add all those together, it shows  
13 total monthly expenses of 30,064.

14 Now, as I was explaining to you, what we did  
15 was we took the expenses that would have been lost as a  
16 result of his divorce to Carol and substituted the spousal  
17 maintenance. When we replaced the 6,000, what we took out  
18 was the 5,113 that was for Carol's direct support.

19 Q. You took all of that out?

20 A. Yes, sir. \$5,113.00.

21 Q. And you told me that that included the first and  
22 second mortgages on Bridle Path?

23 A. The ETNA medical, Cigna, State Farm --

24 Q. Try and just answer my question. That's a "yes"  
25 or "no".

1 A. Yes.

2 Q. Thank you. Her medical and dental insurance  
3 premiums are out?

4 A. Yes, sir.

5 Q. Her automobile insurance is out?

6 A. Yes, sir.

7 Q. Her utilities at Bridle Path are out?

8 A. Yes, sir.

9 Q. \$700 temporary support is out?

10 A. Yes, sir.

11 Q. Okay. Thank you.

12 A. We also took out the payments to the credit cards  
13 that were paid off.

14 Q. That would be from the 9,797; the first set of  
15 items?

16 A. Yes, sir.

17 Q. Which credit card payments?

18 A. We would have taken out the Bank of America Visa  
19 card and the Chase card.

20 Q. What about the UBS Visa?

21 A. The entire balance of that UBS Visa was not paid  
22 off; so he still had a minimum monthly payment to that.

23 Q. There was a substantial payment made against  
24 that, is that right?

25 A. That's correct; 20,000.

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1 Q. What did the payments then become on July 2nd,  
2 2008?

3 A. I'm not sure, but the balance was about -- about  
4 20,000.

5 Q. Do you know as you sit here today what payments  
6 Mr. Democker was obligated to make on the reduced balance  
7 of the UBS Visa?

8 A. The exact amount, no, I do not.

9 Q. But in your calculations you took -- you had a  
10 figure of \$1,063 provided by Mr. Democker in January, is  
11 that right?

12 A. That's correct.

13 Q. And you left that same figure in your  
14 calculations?

15 A. Yes, sir. I did.

16 Q. Okay. What else?

17 A. That was all that I took out. And I substituted  
18 in its place \$6,000 of spousal maintenance.

19 Q. Let's go back, if we could then, to the -- I  
20 think you called it Service of Joint Debt and Other  
21 Community Debt; the \$9,797, is that correct?

22 A. Yes, sir.

23 Q. Do you believe that on July 2nd, 2008 Mr.  
24 Democker was still obligated to pay the loan on the UBS  
25 401(K)?

1 A. Yes, I do. I believe he was.

2 Q. How do you know that?

3 A. Let me back up and say that I am not sure whether  
4 that belongs to the loan that was taken out on the QDRO or  
5 on the other one. So I'm not sure.

6 Q. So the figures that you are working with could be  
7 reduced by another \$1,066, which was the monthly figure  
8 that Mr. Democker provided as his debt service in January  
9 of 2008, is that right?

10 A. Potentially.

11 Q. And you just don't know?

12 A. Sitting here today, I don't know.

13 Q. Okay. These EFL loans -- okay? The \$2,834. Did  
14 Mr. Democker indicate how he arrived at that figure in  
15 January of 2008?

16 A. I don't know that Mr. Democker did. We checked  
17 that figure and found that it was accurate based on the  
18 withholding that was being taken out of his monthly check,  
19 yeah.

20 Q. So that's how that was paid; it was a  
21 withholding? It wasn't a check that he wrote?

22 A. It was a requirement that came out of his pay,  
23 yes.

24 Q. And that was to go towards the taxes on the EFL?

25 A. That's correct. Against the deferred

1 compensation that he was to earn for the year 2008.

2 Q. And are you certain that that didn't change in  
3 July of 2008?

4 A. Yes.

5 Q. How do you know that?

6 A. Because it's in the contract and he has to report  
7 the \$91,000 annually. His agreement with UBS was that  
8 amount of withholding would come out monthly.

9 Q. That's the assumptions you make?

10 A. That's not an assumption; that's what the  
11 contract said.

12 Q. Do you know whether the contract changed by  
13 July 2008?

14 A. It did not change by July of 2008, no.

15 Q. How do you know that?

16 A. I believe we reviewed that with Mr. Van  
17 Steenhouse.

18 Q. So we have Mr. -- per your interview with Mr. Van  
19 Steenhouse and that topic would be in the transcript of  
20 that interview?

21 A. Yes, sir.

22 Q. The Occidental tuition; do you know how Mr.  
23 Democker arrived at that figure?

24 A. No, sir. I don't.

25 Q. Do you know whether or not that was an annualized

1 tuition figure simply divided by twelve to reach a monthly  
2 amount?

3 A. My understanding was from the E-mails that I read  
4 that's the way it was calculated. I don't know whether I  
5 got that from his E-mail or Carol's E-mail. But it was a  
6 projection of what the tuition was going to be as time  
7 went on.

8 Q. If I told that that obligation to Occidental was  
9 paid off in full in June 2008; would you have any way to  
10 dispute that?

11 A. Not sitting here today, no.

12 Q. If it was, then that amount would certainly have  
13 to be removed from Mr. Democker's monthly expenses as of  
14 July 2, 2008?

15 A. If it was, yes.

16 Q. You didn't investigate that?

17 A. We are investigating that. The documents that we  
18 needed to investigate it, we haven't received yet. But we  
19 expect to get them.

20 Q. After a year?

21 A. We sent subpoenas and the information that went  
22 out came back. There were holes in the subpoenas and  
23 second subpoenas were sent, yes.

24 Q. After a year, you don't have an answer to that  
25 question?

1 A. That's correct.

2 Q. Did you back out the \$37 that apparently was paid  
3 to State Farm in connection with the Bridle Path property  
4 awarded to Carol?

5 A. No, I didn't because it was not umbrella  
6 liability policy and I wasn't -- and I don't believe that  
7 was associated with the home insurance itself. It was an  
8 umbrella policy that covered other liability besides that  
9 at the home.

10 Q. It was part of the homeowner's policy package,  
11 was it not, for Bridle Path that Mr. Democker had  
12 previously been paying?

13 A. I don't believe so. I think the reason it was  
14 separated between what was Carol's direct support and why  
15 it was put in the other is because it was an umbrella  
16 policy. Not a policy on the house.

17 Q. Can you say, as you sit here today under oath,  
18 that you know that that umbrella policy was in effect in  
19 July 2, 2008 and Mr. Democker continued to pay the monthly  
20 premium?

21 A. All I can tell you under oath today is that was  
22 where Mr. Democker placed it and, therefore, I made that  
23 assumption that it was not for Carol's support or the  
24 Bridle Place house because it was not put into that  
25 category.

1 Q. The \$281.00 for premiums to Hartford were for  
2 which policies?

3 A. I don't know.

4 Q. Do you know whether Mr. Democker was obligated in  
5 any way to continue to pay life insurance premiums on  
6 policies on Carol's life?

7 A. I don't know that.

8 Q. You didn't take the \$281.00 off though?

9 A. No, sir. I did not.

10 Q. But you can't tell me what it's for?

11 A. It's for Hartford term life insurance.

12 Q. You were aware that Mr. Democker had a policy on  
13 his life, correct?

14 A. Yes, I am.

15 Q. Okay. And you are aware that there were two  
16 policies on Carol's life, correct?

17 A. Yes.

18 Q. And you can't tell me which policies this \$281.00  
19 represents?

20 A. No, sir. I can't.

21 Q. Are you investigating that?

22 A. Yes, sir.

23 Q. Will you have an answer at some point?

24 A. Yes, sir. We will have an answer to all these  
25 questions at some point.

1 Q. Now, have you investigated whether or not Mr.  
2 Democker was still a member in good standing at the  
3 Hassayampa Club on July 2, 2008?

4 A. No, sir. Not yet.

5 Q. If he had resigned prior to July 2, 2008, you  
6 would know that \$500 per month would --

7 A. I don't know the answer to that. I know there's  
8 a contract for the membership that required a payment and  
9 I believe that's the payment until that contract runs out.  
10 I am not sure that he wouldn't continue to have to pay  
11 that. But sitting here today, I don't know the answer to  
12 that.

13 Q. Now, are your assumptions that the expenses for  
14 Charlotte and Katie Democker were the same on July 2nd,  
15 2008 as they were in January 31st, 2008?

16 A. I'm not aware that they are exactly the same. I  
17 believe I used that as a baseline for calculating the  
18 financial position based on the information I had at the  
19 time, but I am not aware that it is exactly the same yet.

20 Q. You didn't do any independent investigation  
21 that's completed today that would verify one way or the  
22 other whether the numbers that you are using were the  
23 support of Katie and the support of Charlotte were the  
24 same in July as they were in January 2008?

25 A. I don't have a finished investigation today, no.

1 Q. Similarly, Mr. Democker had considerable detail  
2 that made up the \$7,559 in his basic living expenses. Did  
3 you conduct any independent investigation which is  
4 complete today to verify that on July 2, 2008 those  
5 expenses were the same as they were when you prepared the  
6 affidavit in January 2008?

7 A. That would be the same answer. We are continuing  
8 that investigation and we don't have all the documents yet  
9 to complete it.

10 Q. And the same for Mr. Democker's business  
11 expenses, these unreimbursed business expenses; the \$2,002  
12 figure.

13 Have you completed an investigation that  
14 would allow you to say today whether his unreimbursed  
15 business expenses, which were listed as \$2,002 on  
16 January 31st, 2008, were the same on July 2, 2008?

17 A. We have not completed that yet.

18 Q. And I think you said in response to some  
19 questions that I was able to ask at the end of the day on  
20 Friday that, of course, the \$6,000 in spousal maintenance  
21 that Mr. Democker had been ordered to pay as part of the  
22 divorce settlement would have permitted him to take a  
23 significant tax deduction each year, correct?

24 A. After the divorce, that's correct.

25 Q. So that the actual cost to Mr. Democker in real

1 dollars of that \$6,000 was something less by virtue of the  
2 deduction he was entitled to take, correct?

3 A. It could be based on his income, yes.

4 Q. Have you calculated what the actual cost to him  
5 based on his 2007 earnings would have been to pay \$6,000 a  
6 month?

7 A. We didn't calculate that because his 2007 income  
8 was materially higher than what his 2008 income is. So we  
9 saw no need to try to calculate something that we had no  
10 idea what the tax bracket would be.

11 Q. In looking at the earnings records provided to  
12 you from Mr. Democker, he was not receiving a regular  
13 periodic paycheck from UBS, was he?

14 A. No.

15 Q. And his income fluctuated both in terms when it  
16 was paid and the amounts paid; month against month, year  
17 against year, correct?

18 A. I don't know that it was -- when it was paid. I  
19 believe it was paid the first Tuesday or Thursday of each  
20 month from the previous production month. But in terms of  
21 amount, certainly it would vary.

22 Q. And it's true, isn't it, based on your analysis  
23 of his earnings, both at A.G. Edwards and then at UBS,  
24 that his income tended to increase in the third and fourth  
25 quarters of each year?

1 A. No, I don't think that's true.

2 Q. Do you have some records with you that would  
3 support that answer?

4 A. Yes, I do. The earnings statements -- I have an  
5 earning statement here for January 30th of 2007 in which  
6 his taxable wages for the year were \$218,000. His total  
7 earnings --

8 Q. What document are you looking at, sir?

9 A. I'm looking at the UBS statement for Mr.  
10 Democker's earnings.

11 Q. For what year?

12 A. Dated January 30th, 2007. Excuse me. June 30th,  
13 2007.

14 Q. Would that be for the year July 1, 2006/ June 30,  
15 2007?

16 A. No. It would be for the first six months of  
17 2007.

18 Q. Okay.

19 A. \$218,000.

20 Q. Okay.

21 A. His revenue for the year was 526.

22 Q. Yes.

23 A. So 218 is more than 50 percent. So he didn't  
24 have a better quarter --

25 Q. 218 is more than 50 percent of 526?

1 A. 218 twice is \$436,000. So --

2 Q. I may have a calculator.

3 A. Okay. Us accountants usually need a calculator.  
4 It's difficult to do all that in our head.

5 Q. Lawyers use fingers and toes.

6 A. Thank you. What I show is 218 for the first six  
7 months, which would be 41 percent of the year.

8 Q. Another way to look at that would be 59 percent  
9 earned in the --

10 A. That would be correct.

11 THE COURT: Finish the question.

12 MR. SEARS: 59 percent earned in the second  
13 half of calendar year 2007, correct?

14 A. That's correct.

15 Q. There was more earned in the second half than in  
16 the first half?

17 A. That's correct.

18 Q. Let's talk, if we could, about Carol Kennedy's  
19 financial status on July 2nd, 2008.

20 Have you prepared a similar analysis of her  
21 financial position on that date to support your statement  
22 last week that she had no money to pay her taxes on  
23 July 2nd?

24 A. I believe my statement last week was not a  
25 statement of mine, but a reading of Carol's statement that

1 she didn't have the money. I have not done a calculation  
2 for her for that period of time.

3 Q. So if I understood you to say that you believed  
4 Carol Kennedy did not have money to pay taxes, that's  
5 incorrect? I'm wrong?

6 A. I don't remember making that statement, but I do  
7 know that Carol felt she didn't.

8 Q. Okay.

9 A. And as we look at the documents that I have seen,  
10 I would suggest that she's -- my recollection is she is  
11 probably right.

12 Q. Well, let's go through that then.

13 A. Okay.

14 Q. On July 2nd, 2008 she had how much money in the  
15 bank?

16 A. On July 2nd, I don't know.

17 Q. When did she receive the net distribution from  
18 the UBS 401(K)?

19 A. I believe that was made about the 27th of May.  
20 Excuse me. June.

21 Q. Five days before she died?

22 A. Yes, sir. I believe so.

23 Q. With a weekend in between.

24 A. I believe so.

25 Q. And of that money, how much can you determine

1 from your investigation she had paid out?

2 A. The only records that I believe we have that  
3 indicate from the distribution that she received of  
4 approximately 147,000, there was an E-mail to Mr. Democker  
5 indicating that she had paid \$20,000 on the UBS Visa.

6 And I am not aware of, sitting here today,  
7 what other payments she might have made.

8 Q. And, of course, you investigated to determine  
9 whether or not that payment was received by UBS?

10 A. We are trying to get those records, yes.

11 Q. After a year?

12 A. Yes, sir.

13 Q. Did she write a check to pay it?

14 A. Are we talking about the 20,000?

15 Q. Yes, sir.

16 A. I have a copy of a cashier's check for that  
17 20,000, yes.

18 Q. Do you have any indication that check was  
19 negotiated?

20 A. No, I don't.

21 Q. Is there a reason why you didn't simply use Mr.  
22 Democker's bank statements and credit card statements, for  
23 example, to determine his financial position on July 2nd,  
24 2008?

25 A. Because some of those records I haven't received.

1 I am trying to get those records.

2 Q. Which records?

3 A. Bank statements, credit card statements,  
4 etcetera.

5 Q. You have been trying for a year to get bank and  
6 credit card statements and haven't gotten them?

7 A. No, sir. I've been associated with this case for  
8 a year. When we got started on actually the  
9 investigation, we started finding where we had holes,  
10 which we notified the Yavapai County office for. We were  
11 aware that we were missing documents. They have been  
12 trying to get those.

13 I wouldn't characterize that we've been  
14 looking for them for a year. We haven't been working on  
15 those documents for that long, but it has been difficult  
16 for us to receive those.

17 Q. Do you understand that one of the theories that  
18 the State has advanced in this case is that on July 2nd,  
19 2008, Mr. Democker's financial position was so desperate,  
20 that he killed Carol Kennedy to avoid having to pay her  
21 additional money over time.

22 Do you understand that's one of their  
23 allegations?

24 A. I understand that.

25 Q. And don't you think that it is important if you

1 have been retained to be the financial examiner for the  
2 State of Arizona in this case, to understand completely  
3 what Mr. Democker's financial position was and what Ms.  
4 Kennedy's financial position was on the day she died?

5 A. Was that a question?

6 Q. Yes.

7 A. Absolutely. That's what I am trying to  
8 ascertain.

9 Q. And have you ever been involved in a case in all  
10 of your years of accounting work and law enforcement work  
11 in which it has taken so long to get a simple subpoena  
12 served for bank records?

13 A. Yes, I have been in a number of cases that are  
14 that way. Sometimes they are difficult to get those  
15 records.

16 Q. Have any of the banks objected to producing these  
17 records?

18 A. No. But typical mistakes are made where you send  
19 a subpoena to a bank and you ask them for the records and  
20 they send you, for example, the bank statements. However,  
21 the bank statements don't do you any good if you don't  
22 have the canceled checks and the deposit slips with it.  
23 And many times they don't send them even though you have  
24 asked for them.

25 So you go back to a second subpoena and tell

1   them specifically what you want. But just because you  
2   tell them specifically doesn't mean you always get it even  
3   in the second subpoena.

4                   Now I am not the one that issues those  
5   subpoenas. I only get the information after they have  
6   been received, logged and a copy given to the defense.

7                   So I can't explain to you why we don't have  
8   them yet. All I can tell you is that I don't have them  
9   completely yet. And that's why I have been struggling to  
10  be able to give you the answers that you want. I would  
11  like to give them to you, but I don't have the documents  
12  to give them to you yet.

13       Q.    Do you have bank statements for Carol Kennedy's  
14  bank accounts for the month of June 2008 in your  
15  possession?

16       A.    No.

17       Q.    Do you have any 2008 bank statements for Carol  
18  Kennedy in your possession?

19       A.    I have a few.

20       Q.    Which ones?

21       A.    I don't have those records with me.

22       Q.    Do you have bank statement records for accounts  
23  associated with Steven Democker for June 2008?

24       A.    Some of them.

25       Q.    Which ones are you missing?

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1       A.    I am missing complete statements for the first  
2 six months of that year from the banks. I have gotten all  
3 of the statements. I have got some of them.

4       Q.    Do you have canceled checks from Carol Kennedy's  
5 checking account for any period of time in 2008?

6       A.    Only for those months that we have received from  
7 subpoena, the bank statements. I have the checks stubs  
8 with those, but I don't have all the statements.

9       Q.    So when you say you are still working on your  
10 investigation in this case, is it because you still claim  
11 that you don't have these records?

12       A.    Mr. Sears last Friday I was delivered about 2000  
13 pages of documents.

14       Q.    What are they?

15       A.    They are some of these statements that we are  
16 talking about.

17       Q.    Where did they come from?

18       A.    From second subpoenas to banks.

19       Q.    Did the banks send them directly to you?

20       A.    No. They sent them directly to the Yavapai  
21 County Sheriff's Office, who received them, logged them or  
22 making copies for you and made copies for me. But as of  
23 last Friday, I haven't had time to assemble that data  
24 yeah.

25       Q.    Do they have an index?

1 A. I wasn't given an index, no.

2 Q. Are any of them Mr. Democker's 2008 bank records?

3 A. I haven't seen all of those records yet. I am  
4 not completely sure what all of those documents are yet.

5 Q. Have you asked?

6 A. My office has -- is now going through those,  
7 separating them collating them and plugging in the gaps  
8 that we have missed so that we can then continue on with  
9 our evaluation.

10 Q. So I assume you can't tell me -- you told me you  
11 can't tell me how much money Carol Kennedy had in the bank  
12 on July 2nd, correct?

13 A. I can't tell you what checks she had written and  
14 what had cleared right then, no, I can't.

15 Q. And you can't tell me how much money Steve  
16 Democker had in the bank on July 2nd?

17 A. I can tell you a couple of accounts that he had  
18 money that was in the bank, but at this point I can't tell  
19 you how many accounts we might be missing.

20 Q. Let's go with what you have for Mr. Democker.  
21 Tell me what you show him having in the bank available to  
22 him on July 2nd, 2008.

23 A. My recollection from the documents that I  
24 reviewed yesterday was there were two accounts; one had  
25 9,000, the other had two.

1 Q. 11,000. I can do that in my head.

2 A. Yes, sir.

3 Q. And that's more than \$6,000, isn't it?

4 A. Yes, sir.

5 Q. Mr. Democker owed a minimum to Carol Kennedy  
6 \$6,000 on July 1, 2008, correct?

7 A. That's correct.

8 Q. So he had more than enough money in the bank on  
9 July 1 and July 2, 2008 to pay her the monthly spousal  
10 maintenance, correct?

11 A. To pay her her spousal maintenance, correct.

12 Q. Now, your assumptions that you talked about last  
13 week about Mr. Democker's income, these reductions and  
14 things; you don't have a crystal ball and didn't have a  
15 crystal ball for 2008, correct?

16 A. No, sir. I don't have a crystal ball.

17 Q. And you don't know whether Mr. Democker's income  
18 would have increased significantly, stayed the same or  
19 decreased over the remainder of 2008, correct?

20 A. I wasn't asked to look to the rest of 2008.

21 Q. But I understood you to make some assumptions  
22 about Mr. Democker's inability to meet his expenses that  
23 he agreed to undertake in the divorce case based entirely  
24 on the reduction in his income in the first part of 2008,  
25 correct?

1           A.     Say that again. I don't believe that's correct  
2 because I think what you asked me -- let me repeat it back  
3 to you and see if I understand your question.

4                     I believe what I was asked was whether or  
5 not there was financial difficulties and I said, yes, but  
6 it's not totally based on these records.

7           Q.     If Mr. Democker's income in 2008 picked up, he  
8 made back the 30 percent drop off or some part of that, he  
9 would have had adequate income to meet his reduced monthly  
10 expenses, wouldn't he?

11                    MR. BUTNER: Objection, calls for  
12 speculation.

13                    THE COURT: Overruled. You may answer.

14                    THE WITNESS: I really don't have any way of  
15 calculating that sitting right here today without records  
16 that I -- that are incomplete. I don't know how I can  
17 guess that.

18                    MR. SEARS: Well, we are here today, Mr.  
19 Echols. So we are going to have to do the best we can  
20 with what we have got.

21                    Can you say here today under oath that Mr.  
22 Democker was on July 2nd, 2008 unable to meet his periodic  
23 fixed obligations as they came due?

24           A.     I don't believe I can make that statement here  
25 today, no.

1 Q. What debts of Mr. Democker that you have  
2 described as thinking -- as you thinking existed on  
3 July 2nd, 2008 was he behind on?

4 A. I don't know which records -- which debts he  
5 would be behind on.

6 Q. I heard you say and took notes and I have a  
7 transcript and maybe over the break we can find together  
8 that place. I heard you say that Mr. Democker was unable  
9 to pay the obligations that he agreed to pay and that were  
10 imposed on him by the decree of dissolution of marriage on  
11 the day that Carol Kennedy died.

12 Was that not so?

13 A. I believe my testimony to you was that from the  
14 records that I had, it had indicated that Mr. Democker was  
15 having great difficulty paying his bills. Those were  
16 statements that were made by Mr. Democker. They were  
17 statements that were made by Carol that he was in that  
18 position.

19 I don't have any financial records that are  
20 complete that I can make that statement to you on.

21 Q. Those statements that you saw in E-mails were  
22 made between a divorcing husband and wife, correct?

23 A. Well, some were before they were divorced and  
24 some were after, I believe, yes.

25 Q. And you have been doing this kind of work for a

1 very long time, haven't you?

2 A. Yes, sir. I have.

3 Q. And surely you have seen communications in  
4 divorce cases in which husbands and wives, as they are  
5 splitting up the property in their marriage, each say to  
6 the other "I'm having a tough time financially", whether  
7 it's true or not. People just say that, don't they?

8 A. Sometimes they do.

9 Q. And people say some pretty hurtful things as they  
10 are going through a divorce, whether they mean them or  
11 not. Just the nature of divorces, isn't that so?

12 A. Sometimes they do.

13 Q. Now, let's look at reality though on July 2nd,  
14 2008. Am I understanding you to say you cannot express an  
15 opinion about whether Mr. Democker was solvent or not?

16 A. I can express an opinion based on the E-mails  
17 that I have seen in which Mr. Democker said he was not.  
18 That's the only opinion I can give you.

19 Q. But your job is not to interpret E-mails, is it,  
20 Mr. Echols. Your job is to evaluate forensically the  
21 financial information connected with these two people,  
22 isn't that right?

23 A. My job was to take the E-mails and other  
24 intrinsic information that was provided to me, match it  
25 against the figures that I see and express an opinion.

1 Q. Well, there were a lot of opinions expressed in  
2 those E-mails back and forth between Mr. Democker and  
3 Carol Kennedy about all kinds of things, isn't that right?

4 A. That's correct.

5 Q. About who is honest, who's a liar, who's  
6 manipulative, who's doing what to whom. The E-mails are  
7 just full of that, aren't they?

8 A. That's correct.

9 Q. Your job as a certified public accountant, a  
10 certified fraud examiner though is to look at what the  
11 real situation was, correct?

12 A. Correct.

13 Q. And again I ask you the question: Not based on  
14 what Mr. Democker may have said to his spouse as they were  
15 winding up their marriage of many years; based on the  
16 records can you say here today under oath that Mr.  
17 Democker was insolvent on July 2nd, 2008?

18 A. Without his testimony, no.

19 Q. Now, and his testimony consists of what he said  
20 in an E-mail?

21 A. Correct.

22 Q. Now, what about Carol Kennedy? Let's look at her  
23 financial position on July 2nd. She had \$147,000 about  
24 June 27th, 2008 in her bank account?

25 A. Correct.

1 Q. And she may have gotten a check from the bank for  
2 \$20,000, but you are not even sure of that, correct?

3 A. I know that she got a cashier's check that was  
4 filled out in order to pay the Visa UBS. I don't know  
5 whether that payment ever was made, but I see a copy of  
6 it.

7 Q. You've seen a copy of the cashier's --

8 A. And I have yet to confirm that that payment was  
9 actually made.

10 Q. So now we are down to \$127,000 if that check  
11 cleared, correct?

12 A. I believe that would be correct.

13 Q. And how much else under the decree of dissolution  
14 of marriage was she obligated to pay had she lived? What  
15 else was she required to pay under the decree from that  
16 now \$127,000?

17 A. My recollection is there were two other credit  
18 cards that needed to be paid. One was the Chase credit  
19 card. And I'm going to see if I have a record that tells  
20 me how much that balance was.

21 I don't have an exact amount, but I believe  
22 it was around 30,000 that was paid to Chase.

23 Q. Okay. Now, let me just ask you a question.  
24 That's the Chase card about which Carol and Steve were  
25 still squabbling on the day she died about who was going

1 to pay the back payments on that, correct?

2 A. That's correct.

3 Q. And let's see if we can try and capture what that  
4 discussion was about from your review of the E-mails. You  
5 looked at E-mails about that very subject, didn't you?

6 A. Yes, sir.

7 Q. Steve's position was that Carol had agreed and  
8 was ultimately ordered in the divorce decree, which she  
9 signed, to pay -- to take from this money that was going  
10 to come over by QDRO, this UBS 401(K), she was to pay the  
11 balance of the Chase card, correct?

12 A. That's correct.

13 Q. And Steve's position was that logically it would  
14 be the balance on May 28th, 2008, correct? That was his  
15 position?

16 A. You are saying that his position that was that  
17 logically that would be it?

18 Q. That's what he said.

19 A. Okay. Yes, I believe that's what he said.

20 Q. Her position was that Steve was -- had not made a  
21 total of four payments and that out of fairness, he ought  
22 to pay those four back payments before she then used her  
23 money to pay the balance, correct?

24 A. She was of the belief that the court ordered him  
25 to pay those payments and that he needed to pay them prior

1 to her paying off the balance, correct.

2 Q. And the sum total of those four payments in  
3 dispute is?

4 A. My recollection was \$4,990 or \$98 and some odd  
5 cents.

6 Q. Less than \$5,000?

7 A. Yes, sir.

8 Q. All right. And is the \$30,000 figure provided  
9 inclusive or exclusive of that \$5,000 in disputed  
10 payments?

11 A. My -- I don't have the exact figure. My  
12 understanding was the limit of Chase was 30,000 and it was  
13 at its limits. So it was going to be paid off. 30,000  
14 would have been the total.

15 Q. Okay. And from Carol's perspective perhaps she  
16 would pay 25 and Steve would pay five?

17 A. From Carol's perspective, I'm sure that that's  
18 true. Although later on the E-mails indicated that that  
19 was going to be handled by virtue of the excess funds from  
20 the QDRO as opposed to the payment on the Chase card.

21 Q. So now we are down -- if you take the full  
22 \$30,000, we are down to \$97,000 roughly?

23 A. Yes, sir.

24 Q. What else had to be paid?

25 A. There was another credit card balance that had to

1 be paid.

2 Q. Which one?

3 A. I don't recall exactly which one it was, but it  
4 seems to me like the balance was about 15,000.

5 Q. That is the Bank of America Visa card?

6 A. That may be true. There was two Bank of Americas  
7 and I am not quite sure.

8 Q. It was actually about 12,000.

9 A. Well, my recollection was it was about 15, but it  
10 could have been close to that, yes.

11 Q. You don't have any records with you here today to  
12 indicate that?

13 A. I don't have all the records with me, no.

14 Q. All right. So let's take the 97. Let's subtract  
15 your 15, okay? That leaves \$82,000, correct?

16 A. Yes.

17 Q. What else was she obligated to pay?

18 A. I believe she was going to pay her attorney.

19 Q. How much?

20 A. I believe it was 40,000.

21 Q. Did you receive some pretty strong indication  
22 that she was dissatisfied with her attorney?

23 A. I saw some indication that she was dissatisfied  
24 with the outcome and she felt her attorney had not done a  
25 real good job.

1 Q. There was some pretty heated E-mails between Mr.  
2 Casalena and Carol Kennedy on that very topic in which  
3 Mr. Casalena was telling her how badly she had been  
4 represented, correct?

5 A. That's correct.

6 Q. Those were some of the same E-mails where Mr.  
7 Casalena was asking for more money for himself, correct?

8 A. That's correct.

9 Q. Do you know whether Carol Kennedy intended to pay  
10 \$40,000 or any amount to her attorney?

11 A. Do I have any evidence that would suggest that  
12 she intended to?

13 Q. Yes.

14 A. Yes.

15 Q. What?

16 A. I think she indicated that she was going to pay  
17 her bills.

18 Q. Did you see the handwritten memos in Carol  
19 Kennedy's handwriting taken from her home after her death  
20 in which she had a series of what some people might call  
21 pro forma budgets where she was trying to take the income  
22 that she thought she would receive, the income that she  
23 might be able to earn under various scenarios for herself  
24 and the expenses to see how much she could come up with at  
25 the end?

1                   Have you seen those documents?

2           A.     There were a lot of those documents because she  
3 was concerned that she was not going to have enough money  
4 and she was trying every which way to manipulate what she  
5 had to get her payments made, correct.

6           Q.     It's true though, isn't it, Mr. Echols, in every  
7 one of those documents, no matter how Carol divided it up,  
8 how much she paid here, how much she paid there, there was  
9 always some net residual amount that she was going wind up  
10 with? Every one of those pro forma budgets had Carol  
11 lining up paying all of her obligations, including all the  
12 taxes and still having some amount of money left over for  
13 herself? Every single one of them?

14          A.     No, I don't believe that's correct.

15          Q.     Show me one that didn't.

16          A.     Show me one that does. I don't have one with me.  
17 As I look at this, 82,000 if you subtract 40, that leaves  
18 her 40.

19          Q.     42.

20          A.     42. Less the 15 she owed Casalena. That leaves  
21 her 27.

22          Q.     What makes you think she owed Casalena 15?

23          A.     I believe there is invoices somewhere of the  
24 money that she owed him where it was somewhere in that  
25 neighborhood.

1 Q. Is this all from memory?

2 A. Yes, sir.

3 Q. What if I told you that the amount that she owed  
4 Mr. Fruge was actually 25,000 and not 40,000?

5 A. That she owed Mr. Casalena?

6 Q. Mr. Fruge.

7 A. Mr. Fruge. I can't dispute that. I don't have  
8 it in front of me. So that I don't know.

9 Q. All right.

10 A. But my recollection is it was 40 and that  
11 Casalena was 15 and that was the reason why she was upset.  
12 Because that would not leave her any money to pay for the  
13 residual taxes that were due for 2008 on her QDRO.

14 Q. How much were those?

15 A. Well, I think the best estimate that she had  
16 received and had her mind she was thinking she had to pay  
17 somewhere around 60 to 65,000 and 36 had been withheld.  
18 So she had another -- at least another whatever that  
19 difference is to --

20 Q. In fact, those numbers were included in all these  
21 handwritten pro formas that she prepared, weren't they?

22 A. Yes.

23 Q. Is it your testimony here under oath that you  
24 remember seeing at least one of those pro forma budgets  
25 that Carol had prepared that showed her either with no

1 money or a negative sum after all these obligations were  
2 paid?

3 A. No. I'm telling you that sitting here under  
4 oath, I don't have one in front of me. So I can't give  
5 you an answer to that.

6 Q. How much money was Mr. Casalena actually paid?

7 A. I don't know the answer to that.

8 Q. Have you looked at his billing statements?

9 A. Mr. Casalena's? No.

10 Q. How can you offer any opinion here today about an  
11 obligation that Carol had to Mr. Casalena if you haven't  
12 made any effort to review his billing records to see what  
13 the amount was?

14 A. Well, first of all, the question is not correct  
15 because it's not that I haven't made any effort. It's I  
16 have gone through what documents I have got. I see the  
17 transactions and the E-mails between Carol and Mr.  
18 Casalena and know that she owed him money.

19 My recollection of talking to Mr. Casalena  
20 personally was that there was an outstanding bill of about  
21 \$15,000.

22 Q. What about Mr. Fruge's billing records? Did you  
23 look at them?

24 A. I haven't had an opportunity to talk to Mr. Fruge  
25 and Mr. Fruge's records have not been made available to

1 us. So I have no way of knowing that.

2 Q. So you have no information about what Mr. Fruge  
3 would have been owed?

4 A. I don't have any information about anything with  
5 Mr. Fruge because we have not been given access to those  
6 records.

7 Q. What about from Carol's records? You had her  
8 checking account records and you had all of her E-mails.  
9 Did you see any indication in any of those communications  
10 where Mr. Fruge about some outstanding balance to him?

11 A. We have been trying to locate the records and the  
12 checkbook for Carol on the date of her death and as of  
13 yet, we have not been able to obtain that.

14 Q. You don't even have her checkbook?

15 A. The new checkbook that her funds went into, no.

16 Q. I think it's in evidence. Have you asked the  
17 County Attorney to look for it?

18 A. I haven't seen it.

19 Q. I think it was next to her body when she was  
20 found.

21 A. I believe I asked them and I don't believe they  
22 have it.

23 Q. Did you find any communication from Mr. Democker  
24 after May 28th, 2008 to Carol Kennedy in which he said he  
25 continued to have trouble paying his bills?

1 A. I believe so.

2 Q. Can you point me to it?

3 A. Yes, sir.

4 MR. SEARS: I don't know if the court was  
5 intending to take a mid-afternoon break, but if this was a  
6 good time, I wouldn't object.

7 THE COURT: I usually do, but usually make  
8 it 3:00 -- 3:15.

9 MR. SEARS: I was just thinking if Mr.  
10 Echols --

11 THE WITNESS: I have one.

12 MR. SEARS: What is the message number, sir,  
13 at the top?

14 A. Zero zero seven one.

15 Q. That's Exhibit 42. If I might have a moment,  
16 Your Honor.

17 You want to tell me which paper you are  
18 looking at, Mr. Echols?

19 A. I am looking at the first page down where it  
20 starts: The minimum monthly.

21 Q. The exhibit I have may be paginated differently  
22 from the one you have.

23 A. That's part of the problems I have had.

24 Q. Show me. The difficulty I have, Your Honor, is  
25 that Exhibit 42 in evidence -- perhaps I have the wrong

1 one. I'm sorry. I read that wrong. Excuse me.

2 I was thinking over the weekend if they made  
3 arm extenders, this might be a good time for me to do  
4 that.

5 THE COURT: We probably have to issue  
6 magnifying glasses at each table.

7 MR. SEARS: I think you are right. I think  
8 we are on the same page now, Mr. Echols. May I approach  
9 the witness, Your Honor?

10 THE COURT: Yes.

11 MR. SEARS: Thank you. I see that  
12 paragraph.

13 MR. BUTNER: What paragraph, sir?

14 MR. SEARS: I'm sorry?

15 MR. BUTNER: You said "I see that  
16 paragraph".

17 MR. SEARS: Yes.

18 MR. BUTNER: What paragraph, sir?

19 MR. SEARS: This would be a paragraph that  
20 Mr. Echols has marked here on his document in yellow,  
21 which is on Exhibit 42 in evidence, which is message 0071.  
22 And it is a paragraph that begins in a message from Mr.  
23 Democker on Sunday, July 1, at 10:36 a.m.. The paragraph  
24 begins: The minimum monthly service.

25 MR. BUTNER: Thank you.

1                   MR. SEARS: Okay. And this is a discussion  
2 -- this is right after the divorce, a day or two after the  
3 divorce, correct?

4           A.     That's correct.

5           Q.     And the discussion of this, the top of this, is a  
6 discussion between -- it's Mr. Democker's E-mail saying he  
7 made a bunch of last-minute concessions that left you  
8 with, quote, almost \$40,000 in cash free and clear and the  
9 use of a tax withholding for a year under your '08 taxes  
10 were due.

11                   He goes on and discusses in detail the  
12 concessions that he claims he made in the settlement,  
13 correct?

14          A.     That's correct.

15          Q.     And then he says -- he compares her position  
16 saying in Exhibit 42: In fact, the additional concessions  
17 that day added another \$30,000 you were excused from  
18 paying from the UBS card, plus 7,000 extra to you from my  
19 401(K). Leaving you with a total of an additional \$37,000  
20 for a total free and clear cash reserve of nearly \$70,000  
21 after paying off the other two cards. This was so you  
22 could pay your attorney and pay for the mistake you made  
23 on your '07 taxes.

24                   I, on the other hand -- this is Mr. Democker  
25 talking -- will have the \$23,000 surrender proceeds from

1 your little retirement accounts and the \$7,000 check you  
2 will give me for my half of the 401(K) overage with which  
3 to pay Anna, pay down the rest of my UBS card and take  
4 care of our daughters. But this isn't enough for you, is  
5 that correct? Steve.

6 That's his message, correct?

7 A. That's correct.

8 Q. And there is no reply directly on this exhibit.  
9 There is another message from Mr. Democker here, which is  
10 a little confusing. But it talks about the same topic.

11 It talks about on page two, line 14 of our  
12 temporary orders, they state that I am to continue paying  
13 minimum monthly service on joint revolving debt and other  
14 discretionary obligations, which totals approximately  
15 \$7,941 a month. The minimum monthly service on these  
16 other joint obligations is actually \$8,180 without even  
17 considering whether I should also be servicing the Chase  
18 account.

19 I did so voluntarily until I ran out of  
20 money and began borrowing \$20,000 a month from my dad just  
21 to stay solvent. This \$8,000 a month in service I was  
22 paying excludes our mortgage on the townhouse, which also  
23 is a joint asset for which I am making your half of the  
24 payment. I haven't even counted that.

25 He goes on to talk more and more in

1 considerable detail about the negotiations that led to the  
2 settlement in this divorce case, correct?

3 A. That's correct.

4 Q. And what they are talking about in this E-mail is  
5 -- actually is the Chase payments? The same nagging  
6 question of these back payments, correct?

7 A. Basically that's what they are getting to, yes.

8 Q. On page two of the Exhibit 42, Mr. Democker goes  
9 on to say: But rather than being grateful that I made the  
10 Chase payments for you as long as I did or that I was  
11 willing to toss in an additional \$37,000 in cash to help  
12 you dispense with hanging bills like Chase, and your  
13 colossal mistake with your expert witness, now you want to  
14 back up on the agreement we had when we walked away from  
15 the courthouse.

16 If you wish to drag the four of us back to  
17 that courthouse, that will be on you. As is the four  
18 month continuance you forced on us that turned out to be a  
19 complete and very expensive waste for both of us and for  
20 which I declined to go after my attorney's fees. That  
21 would have been a slam dunk. But what I wanted was for  
22 this to be over.

23 So I showed up with tens of thousands in  
24 additional concessions. If you attack our agreement now,  
25 I will do everything in my power to make you pay for the

1 wasteful expense that you and your attorney caused in your  
2 mismanagement of this case.

3 My hope is instead that you'll accept the  
4 Chase and every other point of disagreement that have now  
5 been resolved as part a mature agreement and take  
6 responsibility for your obligations under the agreement.

7 I hope there will come a moment soon when  
8 you'll accept that this is over, Carol, despite all of  
9 your efforts to the contrary. Let's move on. S.

10 Okay? That's his message?

11 A. Yes.

12 Q. Now here comes a response from Carol. She says  
13 on May 31 at 5:41, three days after the divorce.

14 MR. BUTNER: Objection, it's not a response,  
15 judge. This one is before that.

16 THE WITNESS: Yes.

17 MR. BUTNER: This is May 31 and he was  
18 talking about June 1st.

19 THE COURT: I was following the dates.

20 MR. BUTNER: Okay.

21 THE WITNESS: This is actually the statement  
22 that she made for which the response you just read was  
23 made.

24 MR. BUTNER: It's in just the opposite  
25 order.

1 MR. SEARS: I see. So they start back to  
2 front.

3 THE WITNESS: That's correct.

4 THE COURT: To the extent that needs to be  
5 sustained, I will sustain it.

6 MR. BUTNER: Just a clarification.

7 THE COURT: I was following.

8 MR. SEARS: Okay. So that's the E-mail you  
9 are talking about then. I think the original question  
10 here was whether you were aware of any communications  
11 between Steve and Carol in which he claimed to be  
12 insolvent between the time of the divorce on May 28th and  
13 her death on July 2nd, is that right?

14 A. That's correct.

15 Q. This is what you are talking about; Exhibit 42?

16 A. That's one of them, yeah.

17 Q. Isn't it true, Mr. Casalena, (sic) that what he  
18 was talking about in Exhibit 42 in this lengthy discussion  
19 back and forth is what had happened prior to the divorce?  
20 He's talking about how he had trouble paying the bills  
21 during the period of time from March of 2007 until the  
22 divorce was over.

23 That's what these E-mails were about, isn't  
24 it?

25 A. Yes, I believe that's correct.

1 Q. He's not saying in these E-mails that he is  
2 presently insolvent? He just said that he had such big  
3 expenses until the divorce was final, that he had to  
4 borrow money from his dad to keep afloat?

5 A. That's what he said, correct.

6 Q. Now, by contrast in the period of time after the  
7 divorce, in the days between May 28th and Carol's death on  
8 July 2nd, there are no communications in which Mr.  
9 Democker has said he's dissatisfied with the divorce, are  
10 there?

11 A. Mr. Democker?

12 Q. Yes.

13 A. No, not that I'm aware.

14 Q. Right. I'm sorry. Did you say not right away?

15 A. No. I said not that I'm aware of.

16 Q. Not that you are aware of. Thank you.

17 Your Honor, this would be a good spot for me  
18 to -- I think we have now hit the 3:00 o'clock hour.

19 THE COURT: We have hit the 3:00 o'clock  
20 hour. We will take a recess for 15 minutes.

21 (Recess.)

22 3:20 p.m.

23 THE COURT: The record shall show the  
24 presence of the defendant and counsel and the prosecutor.  
25 Mr. Echols is still on the stand.

1 Mr. Sears.

2 MR. SEARS: Mr. Echols, in your interviews  
3 that you participated with UBS employees, did any of them  
4 discuss with you the impending division of the client base  
5 that Barbara O'Non and Mr. Democker had maintained?

6 A. No.

7 Q. Do you know what I'm talking about?

8 A. Yes, I do.

9 Q. It's true, isn't it, that as a result of the  
10 anticipated reallocation of those clients, it was quite  
11 likely that Mr. Democker was going to show a spike in  
12 revenues perhaps as much as 15 percent in the short term?

13 A. I don't have any way to base any knowledge on  
14 that, no.

15 Q. And, in fact, the discussions and the  
16 decision-making part of that were going to happen right  
17 around the time Carol Kennedy died. That's your  
18 understanding, isn't it?

19 A. If that was going to, it didn't show up in his  
20 earning statements because clear up into October there was  
21 no spike in revenue. In fact, there was a continued  
22 deduction in revenue.

23 Q. Well, in fact, as a result of circumstances  
24 surrounding the death of Carol Kennedy, the plan at UBS  
25 internally to reallocate the client base that Mr. Democker

1 and Ms. O'Non were managing was shelved and eventually Mr.  
2 Democker was arrested and it became a non factor, correct?

3 A. I don't know any of those facts. I only know  
4 what he earned from up through October of 2008 and there  
5 was no spike in revenue.

6 Q. Let's go back and talk, if we could, about the  
7 events that led to the settlement of the divorce in this  
8 case. I think you have told us now that you have reviewed  
9 the documents from Anna Young's file, correct?

10 A. That's correct.

11 Q. And I assume you have also reviewed the court  
12 file?

13 A. Of what has been given to me, yes, I have. I  
14 believe I have everything that's been given to me and I  
15 think it is all the reports, yes.

16 Q. You have also told us on a number of occasions  
17 that you have seen many, many E-mails between Mr. Democker  
18 and Ms. Kennedy, the lawyers who were involved, Jody  
19 Brown, the mediator in this case, Mr. Casalena, all  
20 leading up to the conclusion in the divorce case on  
21 May 28th of 2008, correct?

22 A. Yes.

23 Q. Now, let's talk about the issues that were up for  
24 discussion during the period of time from March 2007 until  
25 May of 2008. The question of the 2007 tax returns

1 actually began through communications between Steve and  
2 Carol as early as February of 2008, correct?

3 A. That's correct.

4 Q. And Carol was aware by the end of February 2008  
5 of Steve's intention to file a married filing separate  
6 return unless they could work out some other  
7 accommodation, correct?

8 A. Unless they could work out some other  
9 accommodation, I believe so, yes.

10 Q. You would agree with me that February 2008 is  
11 about three months prior to the settlement on May 28th,  
12 correct?

13 A. That's approximately correct, yes.

14 Q. You have seen communications, E-mail  
15 communications, in which it was pretty clear that Ms.  
16 Kennedy was informing her attorney, Mr. Fruge, of this  
17 development and seeking his advice?

18 A. As well as others, yes.

19 Q. And, in fact, she was also seeking the advice of  
20 Mr. Casalena on this question during that period of time,  
21 correct?

22 A. That's correct.

23 Q. And, in fact, she sent E-mails to Mr. Democker  
24 saying that she had talked to some unnamed tax  
25 professionals, correct?

1 A. That's correct.

2 Q. And Mr. Democker had sent her a reply; one of  
3 them saying that he was having a hard time accepting the  
4 fact that he should be persuaded by tax advice from people  
5 that she was not comfortable naming, correct? Remember  
6 that?

7 A. I believe that continued to happen between them,  
8 yes.

9 Q. In fact, even up to the day she died, she never  
10 told Mr. Democker the names of any of the people that she  
11 had gotten tax advice from other than her attorney, Mr.  
12 Fruge, and Mr. Casalena, correct?

13 A. And Ms. Wallace, yes.

14 Q. Did she ever mention Ms. Wallace's name to Mr.  
15 Democker?

16 A. She must have because there were a lot of records  
17 sent out of Anna Young's office to Ms. Wallace's office  
18 for the preparation of the returns.

19 Q. Do you have any communications from Cynthia  
20 Wallace to either Anna Young or to Mr. Democker on the  
21 subject of the propriety of claiming the alimony deduction  
22 for tax year 2007?

23 A. That was a confusing question. Would you say  
24 that again?

25 MR. SEARS: May I have it read, Your Honor?

1 (The court reporter read back the question.)

2 THE WITNESS: From Cynthia Wallace to Anna  
3 Young or Mr. Democker; I don't believe I have seen any.

4 MR. SEARS: Thank you. Now, among the other  
5 issues that were discussed during the period of time  
6 before the divorce was settled, is the question of whether  
7 Mr. Democker had a book of business at UBS that had a  
8 value that made it an asset subject to division in the  
9 divorce, isn't that right?

10 A. That was a question they were arguing over, yes.

11 Q. And the genesis of that topic seemed to come from  
12 Mr. Casalena early on in the case? Is that your  
13 assessment?

14 A. No. I think there was a question in Carol's mind  
15 as to what the value of that particular asset was as well  
16 as Mr. Casalena.

17 Q. And it's true, isn't it, that even as early on in  
18 the divorce as September of 2007, some eight months before  
19 the divorce was settled, at a mediation between the  
20 parties conducted by retired Judge Hancock and his wife,  
21 Jody Brown Hancock, the subject of the book of business as  
22 an asset came up at the very end?

23 A. It did come up at the very end. I think it was  
24 originally talked about earlier than that than just at the  
25 end, but it did definitely come up at the end.

1 Q. Now, you have not spoken with Judge Hancock or  
2 Jody Brown Hancock, have you?

3 A. No.

4 Q. And a continuance of a trial date was obtained at  
5 least ostensibly for the purpose of fully exploring and  
6 investigating the question of whether there was a book of  
7 business and if so, what it's value was, correct?

8 A. Among other issues, yes.

9 Q. And throughout this whole period of time there is  
10 no question that Mr. Fruge was aware of this issue. You  
11 have seen ample evidence that Mr. Fruge understood that on  
12 some level this was an issue in the divorce case, correct?

13 A. Yes.

14 Q. Now, by contrast tell me exactly what it is that  
15 you think Mr. Democker or his attorney or both of them did  
16 to hide or conceal the existence of a book of business?

17 A. I am not sure that I have ever suggested that  
18 anybody was hiding or concealing. I think what I said was  
19 that it was improperly left off of the financial data  
20 submitted to the court.

21 Q. I'm sorry. I didn't understand your answer.

22 A. I believe I said that the existence of the book  
23 of business not being on the financial data that was  
24 issued to the court is what I said was wrong. I don't  
25 believe that they indicated that there was something

1 wrong.

2 Q. Now, the decision to list an asset such as the  
3 book of business, which is an example of an intangible  
4 asset; would you agree?

5 A. I would agree with that, yes.

6 Q. This pen is tangible, correct?

7 A. Correct.

8 Q. And the concept of a book of business is an  
9 intangible, right?

10 A. That's correct.

11 Q. It's clear, isn't it, from your review of all the  
12 relevant records that Mr. Democker and his attorney, Anna  
13 Young, vigorously denied that there was a book of business  
14 and, consequently, that it had no value. That was their  
15 position consistently throughout the divorce, wasn't it?

16 A. I believe that's correct.

17 Q. And so you are saying though it is improper for  
18 an attorney and her client who believed as a matter of law  
19 and a matter of fact that that asset did not exist, to  
20 somehow fail to list it on a financial statement?

21 A. No, that's not what I said. What I said was by  
22 not listing that asset on the financial statement, that  
23 that was improper. I didn't say that they were improper  
24 by not putting it on there. It wasn't there. I don't  
25 know who didn't put it on there, but it belonged there and

1 it wasn't there.

2 Q. Let's take a wild guess, Mr. Echols. If the  
3 affidavit was prepared by Mr. Democker and/or his  
4 attorney, one or the other of them would have been the  
5 responsible party of not listing that asset; isn't that  
6 likely?

7 A. That's likely.

8 Q. And again, I ask you if they think it doesn't  
9 exist, tell me exactly why you believe it's improper for  
10 them to have not listed it?

11 A. Again, I don't believe I have ever said that it  
12 was improper for them not to list it. I just said it  
13 wasn't listed and that was improper.

14 Q. Okay. I'm not sure I see the difference, but we  
15 will leave it at that.

16 A. Well, I can clarify that for you.

17 Q. Please.

18 A. An attorney has a responsibility as does a  
19 client. What they put on their financial statement is  
20 meaningful in being able to determine what the fair market  
21 of community estate is. The fact that they would leave it  
22 off -- an assets off -- is improper. Who did it? I don't  
23 know.

24 Q. Well, let's assume -- let's just assume that Mr.  
25 Democker, acting on and with the advice of his attorney,

1 made a conscious decision not to list that book of  
2 business on any financial documents because they believed  
3 the other, that it did not exist. Let's just assume that.  
4 Okay?

5 A. Okay.

6 Q. Assuming you're correct and it was improper, what  
7 dollar amount should they have put on the financial  
8 statement for this asset they did not believe existed?

9 A. They would put a dollar amount based on whoever  
10 would calculate that value and there were three or four  
11 different pieces of evidence or information that they had  
12 from which they could have derived that value.

13 The fact that that value was put on the  
14 divorce decree is an indication that they knew it existed.

15 Q. Now, let's remember that this affidavit was  
16 simply a document prepared by Mr. Democker's attorney  
17 submitted with their position on that issue. Do you  
18 understand that?

19 A. Yes, I do.

20 Q. And there would have been nothing to prevent  
21 Carol Kennedy and her attorney, Mr. Fruge, from submitting  
22 other documents taking a contrary position that: Oh, yes,  
23 there was a value and it's this amount.

24 There is nothing that prevented them from  
25 doing that, correct?

1 A. No. Not at all.

2 Q. And ultimately if they had gone to trial on  
3 May 28th instead of settling in the courthouse, presumably  
4 the judge would have been asked to make findings to  
5 determine whether there was a book of business and if so,  
6 how much was it worth and then what, if anything, should  
7 be done to try and divide this asset, correct?

8 A. Correct.

9 Q. And that didn't happen, did it?

10 A. It didn't? What didn't happen? It didn't go to  
11 trial. No, it didn't.

12 Q. Mr. Casalena was nowhere to be seen in this  
13 courthouse or in this town on May 28th, 2008, was he?

14 A. I don't know that.

15 Q. Do you have any indication -- any evidence to  
16 support the idea that Mr. Casalena was other than at his  
17 office in Maricopa County, Arizona on May 28th, 2008?

18 A. I can only tell you what Mr. Casalena told me.  
19 And that he was to be here on that date. He was told that  
20 morning not to come.

21 Q. By whom?

22 A. Mr. Casalena.

23 Q. By whom?

24 A. By Mr. Fruge.

25 Q. And did Mr. Casalena say he ignored that advice

1 and came here anyway?

2 A. No, he did not.

3 Q. He was at his office in Maricopa County, wasn't  
4 he?

5 A. I will take your word for it. I don't know where  
6 he was. He wasn't here.

7 Q. Maybe he was at home, maybe he was playing golf,  
8 but he wasn't here, was he?

9 A. I understand you say he wasn't here. I wasn't  
10 here; so I don't know.

11 Q. Okay. And there wasn't a trial. We know that.

12 A. I believe that's correct.

13 Q. In the divorce decree, such as it was, there is  
14 an allocation of the book of business to Mr. Democker.  
15 It's in the divorce decree?

16 A. Correct.

17 Q. All of it?

18 A. Correct.

19 Q. Now, would you agree that if the book of business  
20 had no value as Mr. Democker said, awarding him a  
21 nonexistent asset was a non starter? It just didn't mean  
22 anything, correct?

23 A. I wouldn't come to that conclusion, no.

24 Q. Okay. But on the day the case was settled having  
25 had months, from what you are saying, to look at,

1 investigate and research and otherwise formulate an  
2 opinion as to the book of business -- whether it existed,  
3 whether it had value -- on the day the divorce case was  
4 settled, all the parties and their lawyers, Mr. Democker,  
5 Ms. Kennedy, Mr. Fruge, Ms. Young, all signed a document  
6 saying whatever it is, Mr. Democker can have it, correct?

7 A. That's my understanding.

8 Q. That's a complete allocation of that asset  
9 whether it exists or not, isn't it?

10 A. That was a complete allocation of that asset.

11 Q. And there is --

12 A. There was no reflection in there as to whether it  
13 existed or not. It existed earlier when it was listed in  
14 the decree.

15 Q. Maybe. Do you know that for a fact?

16 THE COURT: Counsel, remember that this is a  
17 presentation for me and I think I have got the point.

18 MR. SEARS: Okay. Thank you, Your Honor.  
19 I'm sorry. I do get lost here sometimes. I apologize.  
20 And this is the first time I have had an opportunity to  
21 speak with Mr. Echols.

22 THE COURT: I understand that as well.

23 MR. SEARS: Thank you. In your report, Mr.  
24 Echols, on page two of four, you made a couple of  
25 statements about this book of business. At the end of the

1 first paragraph you said: "Mr. Democker submitted  
2 fraudulent statements to the court under penalty of  
3 perjury by not listing the value of this book of  
4 business."

5 That is a conclusion that you have put in  
6 writing, correct?

7 A. Yes, sir.

8 Q. Now, let's understand, if we could, what you mean  
9 by fraudulent. In my mind, fraudulent has some element of  
10 concealing a fact or misrepresenting a fact.

11 Would you agree with me?

12 A. Yes, I would.

13 Q. Tell me again how Mr. Democker concealed any  
14 aspect of the evidence regarding the existence or non  
15 existence of this book of business in connection with the  
16 divorce case?

17 A. Mr. Democker had just got through signing an  
18 agreement in September of 2004 for income with respect to  
19 what we referred to as a book of business. In fact, he  
20 received compensation of somewhere around in excess of  
21 \$800,000 in return for his bringing the book of business  
22 and making it accessible to UBS.

23 Q. Let's talk about fraudulent though. Did Mr.  
24 Democker conceal or misrepresent the fact of his  
25 recruitment agreement in August of 2004 with UBS during

1 the divorce at any time?

2 A. He didn't conceal the agreement, no.

3 Q. He turned it over, correct?

4 A. Correct.

5 Q. Okay. So the fact that you say that that  
6 agreement -- we will talk about that in a minute -- but  
7 you say that that agreement should somehow be proof of the  
8 existence of the book of business was never withheld or  
9 misrepresented or concealed from Carol Kennedy and her  
10 lawyer in the divorce case, correct?

11 A. The agreement was never concealed, no.

12 Q. Now, did Mr. Democker prevent Mr. Fruge or Mr.  
13 Casalena from investigating with whomever and wherever  
14 they wanted other issues related to this book of business?  
15 Did Mr. Democker do anything to prevent that from  
16 happening?

17 A. No, I don't believe so.

18 Q. Did Mr. Democker make any statements in his  
19 deposition in which he concealed or misrepresented his  
20 position about the book of business?

21 A. Basically on September the 23rd of 2008 Mr.  
22 Democker was asked about the book of business. He  
23 responded by saying he could go down the street and get a  
24 million dollar check for that book of business and that's  
25 contrary to what he showed on the financial statement.

1 Q. I think you mean October 23rd, the day he was  
2 arrested.

3 A. I'm sorry. October 23rd, yes.

4 MR. SEARS: If I could have a moment, Your  
5 Honor.

6 THE COURT: You may.

7 MR. SEARS: While I am looking here, Mr.  
8 Echols, that statement was contained in a report that you  
9 were shown from the Yavapai County Sheriff's Office based  
10 on statements Mr. Democker made to them on that day he was  
11 arrested, correct?

12 A. That's correct.

13 Q. And I'm certain I have those here. It just might  
14 take me a moment. Here we go. I have it now.

15 Let's take a second and let's see -- do you  
16 have a transcript in front of you?

17 A. No, sir. I don't. I can get it, if you would  
18 like me to.

19 Q. Yes. It's Bates number 3799, page 16. Take a  
20 quick peek of the evidence log. I don't believe this has  
21 been marked.

22 A. I show that as being on page 294 of 346 of a  
23 particular document that was given to me.

24 Q. Well, let me show you what I have here, Mr.  
25 Echols. This is from a disclosure. This is a Bates stamp

1 put on there by the County Attorney's office.

2 Are we looking at the same page?

3 MR. BUTNER: Mr. Sears, would you say the  
4 Bates number again, please?

5 MR. SEARS: 3799.

6 MR. BUTNER: Could I take a look at that  
7 before you show it to the witness?

8 MR. SEARS: You bet you could. You want to  
9 wait for Mr. Echols to read it or would you like to read  
10 it along?

11 MR. BUTNER: I would like you to show it to  
12 me for a moment so I can see if we have a copy of that. I  
13 am sure we do; I just need to find it.

14 MR. SEARS: This also came from you.

15 MR. BUTNER: I know that. See that okay?

16 MR. SEARS: Are we on the same page  
17 literally?

18 MR. BUTNER: We will be in a moment. Thank  
19 you.

20 MR. SEARS: Okay.

21 MR. BUTNER: Is that just a page, sir?

22 MR. SEARS: Yes. It's page 16.

23 THE COURT: 141.

24 MR. SEARS: I yearn for the day of the  
25 stickers and the ballpoint pen. Life seemed so much

1 simpler.

2 THE COURT: Amen. It's ready, Mr. Sears,  
3 when you are.

4 MR. SEARS: I'm sorry?

5 THE COURT: It's ready when you are.

6 MR. SEARS: Thank you, Your Honor.

7 MR. BUTNER: Judge, I think it might be  
8 appropriate to put the whole transcript in. He's just  
9 taking it out of context. In fact, there is a discussion  
10 that continues on the next page about this.

11 MR. SEARS: I don't intend to do that. That  
12 would be a matter on redirect perhaps. I am -- he's now  
13 referred twice to this statement. I just want to see if  
14 we can't clear up what it actually says.

15 THE COURT: Do you want it admitted at this  
16 point just so that you don't forget as a matter of  
17 completeness?

18 MR. BUTNER: Exactly.

19 THE COURT: Do you have an extra page of  
20 whatever?

21 MR. SEARS: It's many pages. It's all this.

22 MR. BUTNER: Right. It's many pages.

23 MR. SEARS: It's 20 pages and I picked out  
24 one page and I haven't even looked at the other pages to  
25 see whether any of this has any relevance to this.

1 THE COURT: The completeness objection is  
2 one for the opponent of the motion or the one who's  
3 claiming that it's incomplete to specify what additional  
4 he believes is necessary.

5 MR. BUTNER: Certainly the following page,  
6 judge, where he continues the discussion the fact that he  
7 can make that amount of money until he retires, etcetera.

8 THE COURT: If you can provide that page, I  
9 will consider your request. I need --

10 MR. SEARS: I have the page and it goes on  
11 and they are talking about completely unrelated matters.  
12 Golf head covers.

13 MR. BUTNER: Mr. Sears, if you would just  
14 read the page without editorializing, please. That's what  
15 we are talking about.

16 MR. SEARS: I am trying to understand what  
17 you could possibly mean about --

18 MR. BUTNER: Well, I'll read it then. And I  
19 can explain it, judge.

20 THE COURT: Why don't you wait on that for  
21 the time being, Mr. Sears, and ask a question. Then if it  
22 needs completeness, then I will let you do that.

23 MR. SEARS: Okay. If I may approach. Can  
24 we stipulate Exhibit 141?

25 MR. BUTNER: No, I'm objecting that it is

1 incomplete. I am not going to stipulate.

2 MR. SEARS: Well, then maybe we need to take  
3 that up because I want to ask the witness to read.

4 THE COURT: Well, you can provide 141 to the  
5 witness and he's not stipulating. So proceed the way you  
6 want and --

7 MR. SEARS: Let's go. Let me show you what  
8 has been marked as 141 for identification. Do you  
9 recognize that transcript page, Mr. Echols? I am looking  
10 for a "yes" or "no", sir.

11 A. I am trying to refresh my memory as to whether I  
12 have actually seen this page or one similar to it.

13 Q. Thank you.

14 A. Okay. Yes, I have seen this before.

15 Q. Now, you see down, if you would, towards the  
16 bottom of the page an answer from Mr. Democker, which  
17 touches upon the statements you made earlier about Mr.  
18 Democker making statements to the police about being able  
19 to go down the street and get a certain amount of money,  
20 correct?

21 A. I see that.

22 MR. SEARS: Okay. I would move 141.

23 MR. BUTNER: Same objection, judge. It's  
24 incomplete.

25 THE COURT: I will admit 141 and now tell me

1 what needs additional --

2 MR. BUTNER: The following page. We can  
3 provide the court with a copy of that page.

4 THE COURT: Will you show what you are  
5 referring to Mr. Sears so that at least you all are on the  
6 same page, so to speak?

7 MR. BUTNER: I think he has a copy of the  
8 same thing I do. It just continues right down into this  
9 section down here.

10 MR. SEARS: It ends with this sentence here.

11 MR. BUTNER: Yes.

12 THE COURT: If you are concerned about the  
13 whole page coming into evidence, Mr. Sears, and only want  
14 that portion, I will let Mr. Butner read into the record  
15 what he's looking for, if you don't have an objection to  
16 that.

17 MR. SEARS: If I could have a second to look  
18 at the end of 141 and see how this relates.

19 You know, maybe the best way to keep the  
20 record clean, Your Honor, would be to quickly redact most  
21 of page 17, which is Bates 3800, as Mr. Butner did. Just  
22 put a piece of paper over it, run a copy of it and put it  
23 into evidence. If we can do that.

24 THE COURT: I think my bailiff is just  
25 leaving. One of the staff will be here.

1 MR. SEARS: You know what? I would be happy  
2 to have somebody do it.

3 THE COURT: Go ahead. You are excused  
4 momentarily.

5 MR. SEARS: I am not going to touch the  
6 copier, Your Honor.

7 THE COURT: Phil can do that in about two  
8 seconds.

9 MR. SEARS: What we are talking about here  
10 is just putting a piece of paper over this part from here  
11 down and blocking that out and making a copy of just that  
12 part.

13 THE COURT: Any objection to admitting that  
14 as Exhibit 142?

15 MR. SEARS: No.

16 THE COURT: Mr. Butner?

17 MR. BUTNER: And you are ending with Mr.  
18 Democker's statement?

19 THE COURT: Phil, before you leave.

20 MR. BUTNER: You are ending with that  
21 statement?

22 MR. SEARS: Yes.

23 MR. BUTNER: Okay. That's fine.

24 THE COURT: Both are agreed if you would  
25 please make us a copy that ends where Mr. Sears indicated

1 and that will be marked as 142 and admitted for sake of  
2 completeness.

3 MR. SEARS: Okay. So I would re-urge 141.

4 THE COURT: 141 is admitted pursuant to your  
5 request.

6 MR. SEARS: Thank you. May I resume, Your  
7 Honor?

8 THE COURT: 142 and 141 are admitted.

9 THE CLERK: 141 and 142?

10 THE COURT: Yes. 142 is simply a partial  
11 page next page after 141.

12 MR. SEARS: Thank you.

13 THE COURT: You may continue.

14 MR. SEARS: Now, if we put that down here.  
15 Let's take a look at 141 in evidence here. Mr. Democker  
16 makes a statement here and looking at this transcript,  
17 this is the statement that you were thinking of when you  
18 testified earlier in this case, is that right?

19 A. That is correct.

20 Q. Okay. And this is what Mr. Democker says: "I  
21 make half a million bucks a year. I can walk down the  
22 street on any given day and get another firm to write me a  
23 check for 1.2 -- 1.1 depending on the firm. I -- I could  
24 get -- I could get paid to change firms by the end of the  
25 week. You take whatever -- whatever the total was of my

1 divorce settlement and you subtract the taxes. The idea  
2 that I would kill Carol, first of all, but you don't know  
3 that, but the idea that I would kill her for 6,000 a month  
4 minus 3,000 a month taxes."

5 That's his statement, correct?

6 A. That's correct.

7 Q. The phrase "book of business" nowhere appears in  
8 that statement, does it?

9 A. No, it does not.

10 Q. In fact, what Mr. Democker says is: I could get  
11 paid to change firms by the end of the week, correct?

12 A. That's correct.

13 Q. Now, let's go back and revisit, if we could, the  
14 agreement that Mr. Democker signed with UBS in August of  
15 2004. That's exactly what Mr. Democker was doing, wasn't  
16 he? He was changing businesses, leaving A.G. Edwards and  
17 going to work for UBS?

18 A. What he did is consistent with the traditional  
19 practice in the industry; of moving and receiving those  
20 funds as a result of bringing that business with him, yes.

21 Q. Mr. Democker brought no clients owned by A.G.  
22 Edwards with him directly to UBS, did he?

23 A. I believe you are confusing clients with the  
24 asset that we are talking about. Clients would be an  
25 asset. We are talking about an intangible, as I recall

1 you calling it.

2 Q. A book of business is nothing more than a client  
3 list of investors for a financial advisor like Mr.  
4 Democker, isn't it?

5 A. Mr. Sears, book of business can refer to three  
6 different parts of the business of a brokerage firm. It's  
7 referred to many times as a physical cabinet where the  
8 files that exist on those particular clients. They are  
9 historical data, etcetera exists.

10 It sometimes is referred to as the client  
11 list. That is the actual people that have a business  
12 relationship with the brokerage firm.

13 And thirdly, it's referred to as that  
14 transitional good will that comes along with the broker.

15 So sometimes we confuse it on which one of  
16 those items we are talking about. I believe the questions  
17 you were asking me was the intangible, which is the  
18 relationship that Mr. Democker has with his clients, which  
19 he can bring with him and which does belong to him, which  
20 can never be taken away from him by any brokerage firm.

21 Q. Let's be real precise, Mr. Echols. The decision  
22 where clients invest their money is not with the financial  
23 advisor; it's with the client, isn't it?

24 A. That's correct. And their relationship with  
25 their financial advisor.

1 Q. Just like a law firm's clients don't belong to  
2 the lawyer. They belong to the law firm, don't they?

3 A. The physical client, the books and records,  
4 etcetera. The relationship between the attorney and their  
5 client does not belong to the firm.

6 Q. If a client of Mr. Democker's wanted to leave  
7 A.G. Edwards and follow Mr. Democker, that's certainly  
8 their choice, isn't it?

9 A. That's correct.

10 Q. But Mr. Democker can't take their file and force  
11 them to come with him, can he?

12 A. That's correct, because he does not own that  
13 file.

14 Q. That's right. A.G. Edwards owned those files,  
15 didn't they?

16 A. That's correct.

17 Q. Now, the compensation package offered and  
18 accepted in August of 2004 between Mr. Democker and UBS  
19 was, in fact, to compensate Mr. Democker for the loss of  
20 his client base because when he went to work for UBS, he  
21 didn't have any guaranteed clients, isn't that right?

22 A. That is not correct.

23 Q. What clients did Mr. Democker have on the day  
24 that he began to work for UBS?

25 A. Mr. Sears, it is a transitional practice for one

1 financial advisor to be lured away to another brokerage  
2 firm and he is compensated based on his ability to bring  
3 with him that relationship. And the letter of  
4 understanding is construed around that relationship and  
5 the new brokerage firms belief that he is going to be able  
6 to bring those clients.

7 That's why the agreement is written the way  
8 it is. It's based on Mr. Democker's 12-year trailing  
9 average from the previous firm and as reflected by what he  
10 can earn as quickly as he can bring those clients with  
11 him. And it's specifically set up for that reason.

12 Q. Would you like to show me where in Exhibit 124,  
13 the letter of understanding between UBS and Mr. Democker,  
14 it says that his compensation is based upon the value of  
15 the clients he brings over from A.G. Edwards?

16 A. You are going to have to provide me with a copy  
17 that I can read.

18 Q. That's the copy that the State marked and  
19 admitted and I don't have a better one.

20 MR. BUTNER: That's the best we could come  
21 up with, quite frankly.

22 THE WITNESS: Would you like to refer back  
23 to this? I have got a copy that's a little cleaner and I  
24 can read off of it.

25 This agreement is basically set up in this

1 fashion --

2 MR. SEARS: Try and answer my question, sir.

3 Would you like it read?

4 A. Page four, paragraph A.

5 Q. Why don't you read me the portion that you are  
6 referring to?

7 A. Your trailing 12-month production at your  
8 previous firm is not less than \$816,944 as of 7/04. Asset  
9 base not less than 75,667 -- excuse me. Let me give you  
10 that figure again. That's incorrect. 75,667,300 as of  
11 7/04.

12 Q. How about this sentence right in that same  
13 paragraph that says: "You have not and will not solicit  
14 any of your current customers to move their accounts to  
15 UBS Financial Services prior to your resignation from your  
16 current firm."

17 A. That's standard for these agreements and standard  
18 for the industry.

19 Q. Now, that says that he agrees that he won't steal  
20 A.G. Edwards' clients and bring them with him. That's  
21 what it says, doesn't it?

22 MR. BUTNER: Misstates what it says, judge.  
23 It speaks for itself and it talks about "will not solicit  
24 prior to resignation from his current" --

25 THE COURT: Sustained.

1 MR. BUTNER: Thank you, Your Honor.

2 MR. SEARS: Now, let's talk about what you  
3 say the industry standards and practices are.

4 By the way, how is it that you know about  
5 industry standards and practices for such letters of  
6 understanding between brokers who leave their previous  
7 employment?

8 A. For the first thirty years of my accounting  
9 practice, I dealt with high income clients, all of them  
10 who hold professional licenses. So I dealt frequently  
11 with helping design these packages, helping sign the  
12 packages, helped negotiate what the amount is and what  
13 they are for.

14 So I am very familiar with them.

15 Q. Did you ever do any work with UBS?

16 A. No, I did not.

17 Q. Okay. So you don't know what their practices  
18 are, do you?

19 A. UBS's practices? Yes, as I talked with Mr. Van  
20 Steenhouse. He said exactly what I am saying to you.

21 Q. Mr. Steenhouse didn't tell you that UBS believed  
22 that Mr. Democker had a book of business on July 2nd -- or  
23 May 28th, 2008, did he?

24 A. Are you asking me in those words?

25 Q. Yes.

1           A.     I visited with Mr. Van Steenhouse and asked him  
2     to explain the method under which they calculated this and  
3     our discussion is exactly as I have discussed it with you.

4                     It was based on the 12 months previous  
5     production and UBS's thought process with Mr. Democker as  
6     to whether or not he could produce that level of income  
7     and that's the reason why they negotiated the agreement  
8     the way they did, which is pretty much standard with any  
9     of those people.

10          Q.     That's exactly right. A new broker to a firm,  
11     like Mr. Democker, comes over and UBS is going to take a  
12     gamble with him and they are going to look at his prior  
13     production -- what you called the 12-months trail -- and  
14     they are going to look at his client base, millions of  
15     dollars under management, and they are going to say to  
16     themselves, aren't they, this guy is a producer and we  
17     will make him an offer sufficiently sweet enough to entice  
18     him to leave where he is and come to us.

19                     That's the process, isn't it?

20          A.     It's part of the process, yes.

21          Q.     And in doing that, UBS is taking a gamble that  
22     Mr. Democker's production will continue to justify the  
23     money that they are going to give him at the front end of  
24     the deal, right?

25          A.     It's a very calculated gamble, yes.

1 Q. Sure. And it's based on their assessment of Mr.  
2 Democker; not just how he looks and how he appeared at an  
3 interview, but what's he done. They want his financial  
4 information to be sure that he is as advertised, right?

5 A. And they have a very good idea as to what they  
6 expect him to do. That's --

7 Q. Right. So --

8 A. -- the reason for the agreement.

9 MR. BUTNER: Let him please finish his  
10 answer, judge. It's an objection.

11 THE COURT: Everybody don't talk over  
12 everybody else. So favor the court reporter, please, by  
13 letting the other finish before you start. He finished.

14 MR. SEARS: Thank you. I didn't want to ask  
15 him if he had finished because he might not have finished  
16 and I would be talking over him.

17 Mr. Echols, would you agree that the common  
18 business practice in this circumstance where a financial  
19 advisor leaves one firm to go to another firm, is to  
20 structure a deal sometimes similar to the one that you  
21 have in this case where there is up front money paid in  
22 part to compensate Mr. Democker for the immediate loss of  
23 revenue because he has no production on which they can  
24 base revenue until he builds his business back up with  
25 them, correct?

1 A. That's part of it, yes.

2 Q. And it would take a period of time to do that and  
3 UBS apparently went through some calculations and figured  
4 that if we gave him a combination of some deferred  
5 compensation, heavily invested in UBS stock -- always a  
6 good idea, right? Keep your employees invested in your  
7 business, right?

8 A. Yes.

9 Q. Okay. Even though we know now that UBS stock has  
10 taken a significant hit over time. We know that, right?

11 A. As they all have, yes.

12 Q. Right. But at the time in 2004, it didn't seem  
13 like a bad package from Mr. Democker's point of view. We  
14 assume he's being offered a lot of cash --

15 A. No, that's typical for the industry.

16 Q. Now, the way it was structured with Mr. Democker  
17 was that with regard to this big lump sum of cash payment,  
18 it would be given to him in the form of an employee  
19 forgivable loan, correct?

20 A. Correct.

21 Q. And all that money was given to him in 2004,  
22 wasn't it?

23 A. No. Let's back up. It wasn't all in cash. He  
24 obviously received the cash, plus he received the stock  
25 that would bullet vest after six years.

1                   So it was a combination of the two, but the  
2 cash portion of it he got totally in September -- October  
3 of 2004.

4           Q.     No lump sum?

5           A.     Yes, sir.

6           Q.     Now, that then would be forgivable over time at  
7 an agreed upon rate, so much per year, for certain number  
8 of years until the loan was fully forgiven, correct?

9           A.     That's correct.

10          Q.     And the push/pull on that with Mr. Democker was  
11 that each year a specific amount of the loan would be  
12 considered to be taxable income to him. He would have to  
13 pay federal income taxes on the amount forgiven each year,  
14 correct?

15          A.     Federal and state, yes.

16          Q.     Okay. That's, in fact, what happened, right?

17          A.     That's correct.

18          Q.     Over time. And you showed us how UBS was not  
19 taking any chances on that and they were actually  
20 withholding the taxes from checks that were otherwise due  
21 to Mr. Democker?

22          A.     That's their standard practice.

23          Q.     Specifically earmarked to be sure that he paid  
24 the taxes on the EFL each year, correct?

25          A.     Yes. That's their standard practice.

1       Q.    Now, having said all that, would you at least  
2   concede that experienced legal and tax professionals on  
3   Mr. Democker's side could take a different position than  
4   you do apparently with respect to whether that agreement,  
5   Exhibit 124, that letter of understanding, creates a book  
6   of business with any cash value?

7               Can you at least concede that reasonable,  
8   educated people can differ on that question?

9       A.    On the value of this?  Yes.

10      Q.    On the existence of it?

11      A.    I don't know how you can deny the existence on  
12   something that's right in front of you.

13      Q.    Based on your interpretation as to what it  
14   creates, right?

15      A.    I don't believe you can get legal people to  
16   disagree that receiving this money isn't standard  
17   practice.  It goes on every day.

18               Is that your question?

19      Q.    Apparently Mr. Fruge did, didn't he?

20      A.    No, I don't believe that.

21      Q.    Well, are you saying that Mr. Fruge's  
22   professional opinion was that, yes, there was a book of  
23   business, but that it had no value and it was appropriate  
24   to give it all to Mr. Democker in the divorce?

25               MR. BUTNER:  Judge, I am going to note an

1 objection at this point. We don't have in Mr. Fruge's  
2 opinion. We have been excluded from that by privilege  
3 asserted by --

4 THE COURT: Sustained.

5 MR. BUTNER: Thank you.

6 MR. SEARS: Whatever the process, Mr.  
7 Echols, you have told us now because the documents say so,  
8 that the book of business, if it had a value, was  
9 allocated to Mr. Democker in the divorce, is that right?

10 A. That's correct.

11 Q. If I understand what you have said, you can't  
12 think of anything that Mr. Democker did to conceal or  
13 misrepresent any of the facts supporting Carol's claim  
14 that there was a book of business, correct?

15 A. No, I didn't say that. What I said was: You  
16 asked me if the attorneys or whoever had suggested that  
17 something had been wrong. I said: No, I didn't know  
18 that.

19 Mr. Democker knew that he had just received  
20 this agreement, he had just received the money. He knew  
21 that it existed and he didn't show it on the financial  
22 statements submitted to the court. That is what I said  
23 was wrong.

24 Q. Okay. Your statement though in your report is  
25 that in omitting any mention of the book of business in

1 his financial statement, Mr. Democker acted fraudulently,  
2 correct?

3 A. That's what my statement says.

4 Q. And I thought you agreed with me that in that  
5 context acting fraudulently implies some element of  
6 concealment or misrepresentation of some fact, correct?

7 A. That's correct.

8 Q. What fact did Mr. Democker conceal from the other  
9 side in this divorce case about the book of business?

10 A. That it existed.

11 Q. How did he do that?

12 A. He didn't show it.

13 Q. We have been down this road before. But you  
14 understand that Mr. Democker and his attorney took a  
15 position that it didn't exist. You know that, right?

16 A. That's the position that they took.

17 Q. Right. And you clearly don't agree with it;  
18 that's right?

19 A. All I am saying to you is that by not showing the  
20 agreement that Mr. Democker has taken out, which is  
21 clearly a reflection of his book of business on his  
22 financial statement, and he knew that he had it because he  
23 just received the money for it, he had left the asset off  
24 of the financial statement. But he did put the liability  
25 on this agreement on the financial statement.

1                   So he obviously knew the agreement existed  
2 and it had value because he put the liability on there; he  
3 just didn't list the asset.

4           Q.     We are mixing concepts perhaps, Mr. Echols.

5                   I'm talking about something you called the  
6 book of business. I am not talking about the employee  
7 forgivable loan, which everyone, I think, agrees existed.  
8 Mr. Democker clearly acknowledged that he had an employee  
9 forgivable loan that had terms and conditions, didn't he?

10                  MR. BUTNER: Objection to the form of the  
11 question. It's vague, convoluted and confusing.

12                  THE COURT: Overruled. You may answer, if  
13 you can.

14                  THE WITNESS: The only way I can answer that  
15 question is Mr. Democker exercised an agreement for which  
16 he received income for the relationship that he had with  
17 his clients when he left A.G. Edwards and he was bringing  
18 to UBS. That agreement is sum and substance the  
19 representation of the asset that he brought.

20                         So they are related.

21                  MR. SEARS: Here -- and I understand your  
22 position. What I'm concerned about are your opinions and  
23 conclusions here in your capacity as a financial fraud  
24 examiner in this case.

25                         And you said in your report on page two that

1 the statements that Mr. Democker made to the divorce court  
2 under penalty of perjury that didn't list the value of his  
3 book of business were fraudulent.

4 Do you understand you made that statement?

5 A. Yes, sir.

6 MR. BUTNER: Judge, I am moving for the  
7 admission of Exhibit Number 20. It is that report. He  
8 keeps talking about. He just excerpts little bits and  
9 pieces. I think the report has been admitted. He's been  
10 cross examining him from that report for quite some time.

11 MR. SEARS: No problem. We attached it to a  
12 pleading, Your Honor.

13 THE COURT: The Exhibit 20 is admitted  
14 without objection.

15 MR. BUTNER: Thank you.

16 MR. SEARS: It being all we ever got from  
17 Mr. Echols.

18 Now, you made that statement, correct?

19 A. Yes, sir.

20 Q. Now, maybe I'm not making myself clear, Mr.  
21 Echols. What I am asking you is to point me to anything  
22 that Mr. Democker did or said in which he actively  
23 concealed or misrepresented the facts of his 2004  
24 agreement with UBS.

25 A. May I use an example that will explain what we

1 are talking about? If Mr. Democker --

2 Q. If you'd just answer my question.

3 A. I can't answer your question. It's so  
4 convoluted; you keep confusing the two. But I can give  
5 you an example that I think will clarify it.

6 Q. Maybe you can do that for Mr. Butner. I would  
7 like you to try and answer my question.

8 A. I'm sorry. I don't even understand the question.  
9 I think I have answered it three times.

10 Q. Let me see if I can break it down into even  
11 smaller bites.

12 In your mind fraud requires proof that the  
13 person committing the fraud misrepresented or concealed or  
14 omitted some material fact in order to take a financial  
15 gain from the other side. That's what fraud is, isn't it?

16 A. That's correct.

17 Q. You have said over and over now that you  
18 specifically find that Mr. Democker's failure to list the  
19 value of this book of business on his financial statements  
20 was perjury and fraudulent, correct?

21 A. Correct.

22 Q. Okay. And we have talked about the fact that it  
23 appears from everything you have seen, that Mr. Democker's  
24 attorney believed for their own reasons that the asset  
25 didn't exist. Do you understand that's their position?

1       A.     That's their position. I don't know that they  
2 believed it.

3       Q.     Are you suggesting that Mr. Democker's attorney  
4 filed something knowingly with the court that they knew to  
5 be false?

6       A.     Yes. I think that's what I have been saying all  
7 along. Mr. Sears, if Mr. Democker owned a dog --

8       Q.     I don't want to hear the dog analogy right now,  
9 Mr. Echols. I just want to understand what it is that Mr.  
10 Democker did that constituted concealing or  
11 misrepresenting any fact about Exhibit 124 in evidence,  
12 the letter of understanding, with UBS in August.

13      A.     Mr. Democker failed to list the asset that he  
14 knew existed.

15      Q.     We are not going to get past this, are we?

16      A.     No, we are not.

17      Q.     Okay. Now, and you believe that as a result of  
18 that -- let me see if I can use your exact words. The  
19 bottom of page three: "The potential for Mr. Democker to  
20 be found guilty of perjury and submitting fraudulent  
21 statements to the court would be extremely high."

22                     Paragraph four, the bottom of page three.

23      A.     Yes.

24      Q.     And then on page four, we have already read:  
25 "His exposure to conviction is great and the resulting

1 consequences are disastrous."

2                   That's the follow-up summary from that same  
3 paragraph, is that right?

4           A.     Yes, sir.

5           Q.     Are we talking about the same thing? We are  
6 talking about your belief that Mr. Democker's failure to  
7 submit through his attorney an affidavit listing this book  
8 of business as having some value is perjury for which he  
9 would be convicted with disastrous results, or are we  
10 talking about something else?

11          A.     I think if you look at paragraph four, it alludes  
12 to all the things that we have talked about, not just  
13 specifically that particular thing.

14                   I believe paragraph four says that if Carol  
15 Kennedy went back to court armed with the information we  
16 have presented. We're talking about the tax return,  
17 talking about the court documents, etcetera.

18                   So not just that incident, no.

19          Q.     It's all -- okay. Now, let me see if I can ask  
20 the question another way.

21                   Tell me what it is that you believed Carol  
22 Kennedy and her attorney lacked in terms of information,  
23 documentation or otherwise for them to understand the  
24 concept of book of business as it relates to this case?  
25 What were they missing?

1       A.    I believe they were missing the representation of  
2   that asset on the financial statement.  They wanted it  
3   shown.  It wasn't there.  Mr. Democker and his attorney  
4   insisted that it didn't exist.  They were suggesting that  
5   it did and they wanted it on the financial statement and  
6   to be a part of the negotiations for the settlement of the  
7   divorce.

8       Q.    I will ask the question again.  Was there any  
9   record, document or piece of information that you believe  
10  was available and known to be available to Mr. Democker  
11  and his lawyer about his transactions with UBS that led to  
12  his employment that Carol Kennedy and her lawyer did not  
13  have?

14      A.    No.  I believe everything that they wanted they  
15  had.

16      Q.    And they seemed to have no difficulty apparently  
17  formulating at various points arguments suggested by Mr.  
18  Casalena in part that there was a book of business and  
19  there had some value and it needed to be divided.  They  
20  seemed to be able to make that argument, right?

21      A.    They were making that argument, yes.

22      Q.    But at the end of the day, on May 28th, 2008,  
23  that argument, such as it was, was resolved by the entry  
24  of the decree of dissolution of marriage in this case,  
25  wasn't it?

1 A. That's correct.

2 Q. And there's not one single place in anything you  
3 have seen or been shown in this case after May 28th, 2008  
4 in which Carol Kennedy said specifically to Mr. Democker  
5 -- communicated to him in any way that she was going to do  
6 anything about the way the book of business issue had been  
7 resolved in the divorce? It never came up again, did it?

8 A. Not after the divorce, no.

9 Q. There wasn't any threat to take him back to court  
10 over the book of business, was there?

11 A. Over the book of business, no.

12 Q. No appeal was taken from the May 28th, 2008  
13 divorce decree?

14 A. Not that I'm aware.

15 Q. No motion for relief under Rule 60 of the Rules  
16 of Criminal Procedure was filed, correct?

17 A. Not that I'm aware.

18 Q. In fact, there is no communication from Carol to  
19 her attorney saying: You know, we dropped the ball on  
20 this one. I want to go back to court and reopen and talk  
21 about the book of business.

22 She never said that to her attorney, did  
23 she?

24 A. To her attorney, no.

25 THE COURT: Isn't that still an issue that's

1 subject to question due to the lack of information coming  
2 from Mr. Fruge?

3 MR. BUTNER: Yes.

4 THE COURT: Due to the attorney/client  
5 privilege being invoked?

6 MR. BUTNER: Certainly, judge.

7 MR. SEARS: Actually, Your Honor, I can  
8 rephrase the question.

9 THE COURT: Why don't you rephrase it. I  
10 will strike the last answer.

11 MR. SEARS: Thank you. Based upon the  
12 understanding clearly that you haven't gotten access to  
13 Mr. Fruge's files or records. Based on the communications  
14 that you saw from Carol, which included communications to  
15 Mr. Fruge, correct?

16 A. Correct.

17 Q. Did you see anything from Carol's records, E-mail  
18 records or otherwise indicating that she had asked Mr.  
19 Fruge or suggested to Mr. Fruge after the divorce that  
20 they do something to reopen the question of how the book  
21 of business issue was eventually treated?

22 A. Between Carol and Mr. Fruge, no.

23 Q. Now, Mr. Casalena was continuing to discuss this  
24 matter with her as part of his messages to her about how  
25 badly she had been treated in the divorce, correct?

1 A. Yes, sir.

2 Q. But she didn't act on that with Mr. Fruge,  
3 correct?

4 A. I don't know.

5 Q. You didn't see anything?

6 A. I didn't see anything.

7 Q. Now, with regard to this allegation that you have  
8 made here that this financial statement of Mr. Democker's  
9 was fraudulent, perjurious is because it didn't mention  
10 the book of business.

11 What other false statements can you identify  
12 that Mr. Democker made under penalty of perjury in  
13 connection with the divorce? And if you might, sir, tell  
14 me what you are looking at.

15 A. The report that you referred to; four-page  
16 report.

17 Q. Thank you. Is that 143, Your Honor?

18 THE COURT: It's Exhibit 20.

19 MR. SEARS: Oh, thank you.

20 THE WITNESS: I believe your question was:  
21 Were there any other statements that I thought were  
22 presented to the court that would be considered fraudulent  
23 or misleading?

24 MR. SEARS: Yes.

25 A. That were signed by Mr. Democker?

1 Q. Yes.

2 A. I don't know of any others.

3 Q. Thank you. Now, let's go back to something you  
4 said here just a few moments ago. If I understood what  
5 you said, you agreed that the cash portion of his  
6 recruitment package with UBS was paid out to him in tax  
7 year 2004, correct?

8 A. I believe that's what I said, yes.

9 Q. And, of course, you were able to trace the  
10 disposition of the proceeds of that employee forgivable  
11 loan and show where all the money went, correct?

12 A. We pretty much tied that down, yes.

13 Q. There is no \$500,000 hidden bank account,  
14 correct?

15 A. I don't believe so.

16 Q. You could see where the money went, the bills  
17 that were paid off and the other debt that was retired  
18 with that money, correct?

19 A. Yes, sir.

20 Q. And in January of 2008 when Mr. Democker made  
21 this financial statement that you talked about, there was  
22 no cash left in the cash account from the proceeds of that  
23 2004 loan, was there?

24 A. I don't believe so, no.

25 Q. It had all been spent or otherwise accounted for,

1 correct?

2 A. It had been turned over, yes.

3 Q. To the extent that it might have been invested --  
4 whatever that investment was -- that was disclosed on the  
5 financial statement, correct?

6 A. I don't believe there are any assets remaining  
7 from those funds, no.

8 Q. Help me out here. Are you saying that you  
9 believe that in that 2008 -- January 2008 financial  
10 statement, Mr. Democker needed to show some asset for that  
11 employee forgivable loan to match up with the obvious  
12 liability that he incurred year against year for the  
13 portion that was forgiven, correct?

14 A. I believe that on that financial statement the --  
15 what everyone had been referring to as a book of business  
16 should have been shown on that statement as well as the  
17 deferred compensation that was yet unearned as a result of  
18 the agreement documenting the book of business.

19 Q. Okay. Talking perhaps two different concepts.  
20 The liability that Mr. Democker showed on the  
21 January 31st, 2008 financial statement was the tax  
22 liability incurred each year that was associated with the  
23 agreed upon amount that was to be forgiven, correct?  
24 That's what he shows on the financial statement?

25 A. He shows both. The tax liability as well as the

1 loan itself.

2 Q. Okay. So for 2008 that's a current financial  
3 snapshot of January 31, 2008, correct?

4 A. Yes, sir.

5 Q. What does he show for the tax liability? It's a  
6 monthly amount, isn't it?

7 A. No. It's a -- this is a profit -- this is not a  
8 profit and loss statement. It's a balance sheet. So he  
9 shows just the liability.

10 Q. What number does he show for the tax liability?

11 A. For the first employee forgivable loan, the  
12 current tax liability was 108,294, which would have  
13 represented the tax liability on the deferred comp or the  
14 outstanding balance of the employee forgivable loan of  
15 \$273,469.

16 Q. Perhaps we are not talking about the same thing  
17 here. In addition to the unpaid balance of the employee  
18 forgivable loan, right? Which was in January 2008 about  
19 273,000, is that right?

20 A. Yes, sir.

21 Q. He also had a deferred compensation package which  
22 was separate from that, correct?

23 A. Yes, sir.

24 Q. And the deferred compensation package took money  
25 that UBS otherwise would have just paid out to him as

1 ordinary income and deferred it pursuant to an agreement,  
2 correct?

3 A. No.

4 Q. Tell me what your understanding of deferred  
5 compensation agreement is if it's not that.

6 A. We are referring to the deferred compensation  
7 agreement under the letter of understanding, correct?

8 Q. Yes.

9 A. That deferred compensation agreement was their  
10 offer to create a deferred compensation for two things.

11 Firstly, the stock that we talked about,  
12 which was part of the original 800,000.

13 The second deferred compensation agreement  
14 referred to the amount of the IRA or deferred comp funds  
15 that were lost at A.G. Edwards when he transitioned from  
16 A.G. Edwards to UBS. Those funds were made available to  
17 Mr. Democker based on his production according to the  
18 terms of the agreement.

19 Q. What asset should Mr. Democker have included, in  
20 your opinion, on that 2008 account associated with, first,  
21 the employee forgivable loan?

22 A. The deferred compensation portion that's  
23 associated with the liability that's shown on the  
24 financial statement.

25 Q. Okay. You would agree that that deferred

1 compensation was not actually available to Mr. Democker in  
2 January of 2008?

3 A. That's why it's called deferred compensation.  
4 It's a part of the agreement that he signed for which the  
5 liability is on the financial statement.

6 Q. And it's also a contingent liability, isn't it,  
7 because if Mr. Democker for some reason was not employed  
8 by UBS on the vesting date of March 2010, he would forfeit  
9 that amount?

10 A. The same agreement is due with the liability  
11 that's on there. It's like buying a car and having the  
12 liability -- the liability of the car on a financial  
13 statement without listing the corresponding car itself.

14 Q. Well, I think --

15 A. Of course, if the car is going to go away, so  
16 will the liability. But if the liability exists, the  
17 asset has to exist with it. You can't have half.

18 Q. But if you have a car and a car loan on  
19 January 31st, 2008, presumably the car is in your  
20 driveway, right?

21 A. Yeah, but if it's not on your financial  
22 statement, you got a problem and that's what we are  
23 talking about.

24 Q. Right. But on January 31st, 2008 all of that  
25 deferred compensation money was not in Mr. Democker's bank

1 account, was it?

2 A. It was in an agreement. A deferred compensation  
3 agreement.

4 MR. SEARS: I don't think we have ever  
5 marked this financial statement, Your Honor. It might be  
6 appropriate.

7 MR. BUTNER: I know we have.

8 MR. SEARS: Have we?

9 THE WITNESS: Isn't that what we just talked  
10 about?

11 THE COURT: The financial statement from the  
12 divorce case?

13 MR. BUTNER: Right.

14 THE COURT: I am not sure.

15 MR. BUTNER: I think we did. I think it's  
16 Exhibit 121 and 122, judge.

17 THE COURT: I'm showing 121 as the 1/31/08  
18 financial affidavit, if I recall. There is an --

19 MR. BUTNER: Both admitted over objection.

20 THE COURT: The earlier one from May 8th of  
21 '07 is 122. But the one you are talking about is 121,  
22 Mr. Sears.

23 MR. SEARS: Okay. If I could just confirm  
24 with Mr. Echols that we are looking at the same document.

25 THE COURT: You may.

1 MR. SEARS: May I approach?

2 THE COURT: Yes.

3 MR. SEARS: Thank you, Your Honor.

4 Mr. Echols, I have here Exhibit 121 in  
5 evidence. And can you look and see if it has Mr.  
6 Democker's notarized signature and then it begins with  
7 this information.

8 Are you just looking at a portion of it in  
9 your notebook here?

10 A. I am referring to a portion of it, yes. I have  
11 got the whole agreement here.

12 Q. Okay.

13 A. It's got the information and the signature you  
14 are talking about. The page, the tax returns, and the  
15 statements that were prepared by Mr. Democker. And it's  
16 this last one that we are talking about.

17 Q. Okay. If I could just have a moment, Your Honor?

18 THE COURT: You may.

19 MR. SEARS: If I can approach the witness  
20 again, Your Honor?

21 THE COURT: You may.

22 MR. SEARS: Let me show you the last page of  
23 Exhibit 121 here, which is -- we have been talking about  
24 this financial statement. The last page is called  
25 "Marital Assets and Liabilities". Are we looking at the

1 same page?

2 A. Yes, sir.

3 Q. I see -- are those your notes?

4 A. Yes, sir.

5 Q. Up here under "assets" there is an item: Net  
6 present value of deferred comp accounts, \$194,464. And an  
7 asterisk that says: See present value calculation on  
8 following page.

9 Do you have the following page?

10 A. No, it was not a following page.

11 Q. Now, tell me what you know about that \$194,464  
12 figure as it relates to the liabilities associated with  
13 it?

14 A. That is the net present value calculations made  
15 by Mr. Democker relating to the deferred comp portion of  
16 his agreement. As you recall in the letter of  
17 understanding, there was \$204,236 that was given in the  
18 form of stock that's a part of the deferred comp agreement  
19 and that asset refers to his calculation of the net  
20 present value of those assets brought up to the value as  
21 of January 31st of 2008.

22 Q. Why don't you tell me, Mr. Echols, what  
23 independent research you did and where you did that  
24 research to test whether or not that \$194,000 actually  
25 represented the present value on January 31, 2008 of all

1 of the deferred compensation, not just the stock? All the  
2 back end benefits, all the money that had been paid out to  
3 Mr. Democker.

4 A. I believe there are about ten work papers on --  
5 from Mr. Democker's computer that we had access to to see  
6 how he had calculated the net present value and the net  
7 present value, as I understand what is represented here,  
8 reflects those two areas that we talked about.

9 First of all, the area of the stock portion  
10 of the original letter of understanding. And the portion  
11 that was the deferred comp that he had lost when he came  
12 over from A.G. Edwards that he eventually got from UBS.

13 Q. The IRA account?

14 A. Yes, sir.

15 Q. That's all the deferred compensation that Mr.  
16 Democker was entitled to under the August 2004 agreement,  
17 isn't it?

18 A. Except for the deferred compensation as it  
19 relates to the employee forgivable loan, yes.

20 Q. Okay. Let's see if we can parse that out a  
21 little more carefully.

22 The employee forgivable loan had a large sum  
23 attributable to it as cash proceeds and all of that money  
24 was paid out in 2004, correct?

25 A. That's correct.

1 Q. No portion of the employee forgivable loan  
2 proceeds was deferred to a later year, was it?

3 A. Yes, it was split over six years. The employee  
4 forgivable loan was reduced at \$91,000 a year for six  
5 years.

6 Q. And each of those years Mr. Democker received no  
7 dollars from UBS, did he, for the employee forgivable  
8 loan?

9 A. No cash dollars, no. It was shown as deferred  
10 compensation on his return.

11 Q. He got the cash for the loan and spent it in  
12 2004, correct?

13 A. Correct.

14 Q. And each year thereafter for the life of the  
15 employee forgivable loan, a percentage of that loan  
16 certain dollar amount was forgiven, correct?

17 A. That's correct. Thereby reducing the liability.

18 Q. And your statement is that somehow even though  
19 all the money has been received and spent, there is a cash  
20 value attributable to the portions of the loan each year  
21 that are forgiven?

22 A. He has deferred compensation yet to be reported  
23 to the Internal Revenue Service, yes.

24 Q. Not with connection with the employee forgivable  
25 loan, correct?

1       A.     That's how the employee forgivable loan is  
2 reduced.

3       Q.     It's a liability. Each year he owes taxes, each  
4 year UBS says: We forgive \$91,000 and it's reportable on  
5 your income tax return, Mr. Democker, and you owe tax on  
6 it every year, correct?

7       A.     Correct.

8       Q.     That's a liability, isn't it?

9       A.     That's a liability.

10      Q.     No money changes hands? Mr. Democker doesn't get  
11 another dollar from UBS in the second year, the third  
12 year, fourth year, fifth year of the employee forgivable  
13 loan, is that correct?

14      A.     That's correct.

15      Q.     But your position is that somehow that's an  
16 asset? That somehow even though all the money has been  
17 paid out, something is deferred?

18      A.     He still has yet to report that income that he's  
19 going to be receiving showing each year on his tax return.

20                     The liability is associated with what?

21      Q.     The money that he received in 2004 that is being  
22 forgiven over time.

23      A.     And that's represented on the financial statement  
24 how?

25      Q.     Exactly --

1 THE COURT: I think we have reversed who is  
2 asking questions.

3 MR. SEARS: You step down here. Good  
4 question. Good question. I think this is another area  
5 where I think we are never going to agree, Mr. Echols, and  
6 I am not going to -- there's a dead horse that doesn't  
7 need any more beating. So let's just leave that alone for  
8 awhile.

9 And that's the other area in the January 31  
10 financial statement with which you had some concern,  
11 correct?

12 A. There were the two issues. The fact that the  
13 deferred comp wasn't issued, but secondly, the book of  
14 business asset itself wasn't issued, yes.

15 Q. Let's talk about this -- as you call it --  
16 deferred compensation. I am not sure that you and I will  
17 ever quite agree on that terminology, but let's talk about  
18 that.

19 Tell me what Mr. Democker did to conceal any  
20 of the details of his employee forgivable loan from Carol  
21 or her lawyer during the course of the divorce?

22 A. I don't know that he concealed any information.  
23 He just didn't list the other side of that particular  
24 transaction on the financial statement.

25 Q. His decision acting on the advice of his attorney

1   apparently, correct?

2       A.    I don't know.   That could be.

3       Q.    His attorney submitted the document, put her name  
4   on it and filed it with the court, correct?

5       A.    I can't make that leap.  I don't know how they  
6   decided it.  It just wasn't there; that's all I know.

7       Q.    The documents you have has a pleading, court  
8   document filed by Mr. Democker's attorney, Anna Young,  
9   that attaches to it this financial statement that we have  
10  been talking about, correct?

11      A.    That's correct.

12      Q.    Okay.  It didn't just come straight from Mr.  
13  Democker and it went through his attorney, correct?

14      A.    Well, I believe the document was signed by -- it  
15  says:  Sworn before me this 31st day of January 2008 by  
16  Steven and Carol Democker.

17      Q.    The first page that is the pleading form for  
18  attorney Anna Young, isn't it?

19      A.    Yes.

20      Q.    So you would presume that she filed that  
21  document, correct?

22      A.    I would assume so.

23      Q.    Okay.  Now, as we discussed with the book of  
24  business question, would you concede that with respect to  
25  this accounting question, reasonable, educated

1 professionals could disagree about whether or not, as you  
2 suggest, something connected with the forgivable part each  
3 year, somehow an asset has to be shown on a balance sheet?  
4 I know you think nobody could, but would you concede that  
5 reasonable people could disagree?

6 A. Mr. Sears, we're going back to the same argument  
7 that we agreed upon before that we are not going to agree  
8 upon. And I tried to tell you my dog story, but you  
9 wouldn't let me tell it.

10 Q. You know, I'm just not up for your dog story  
11 here, Mr. Echols.

12 A. Then I don't know how I can answer that question  
13 for you. We are going right back into circles.

14 MR. BUTNER: I will object, judge. It's  
15 asked and answered.

16 THE COURT: Well, I take it that you won't  
17 agree, Mr. Sears, with Mr. Echols and vice versa. So...

18 MR. SEARS: I agree that we won't agree.

19 THE COURT: Seems pointless to pursue it.

20 MR. SEARS: I agree. There is a certain air  
21 of pointlessness, Your Honor.

22 Now, one more area, Mr. Casalena --

23 THE COURT: I'm sorry.

24 MR. SEARS: Oh, I have made a terrible  
25 misstatement here, Mr. Echols. I apologize.

1                   Mr. Echols, let's talk, if we could, about  
2 this retiring agent's agreement that Mr. Butner showed  
3 you. Do you remember that?

4           A.     Yes, sir.

5           Q.     Okay. And I asked you -- I think I asked you  
6 during Mr. Butner's direct examination some questions  
7 about this, but I want to make sure I understand this.

8                   You have no information that Mr. Democker  
9 ever actually executed that or a similar retiring agent's  
10 agreement, is that right?

11          A.     No. I don't know that he exercised it, no,  
12 because he wasn't retiring.

13          Q.     And that's what it was. It was an agreement that  
14 required as a condition that you announce as a financial  
15 advisor to UBS that you are retiring.

16                   MR. BUTNER: Judge, I am going to note an  
17 objection. The defense objected to this document coming  
18 in earlier and the State tried to move it in and I think  
19 it should be admitted. He's asking him questions about it  
20 at this point in time. It should be admitted.

21                   THE COURT: I don't think we have gotten to  
22 the point where he's asking any questions about the  
23 document. So I will deny it.

24                   MR. SEARS: Thank you. Can you answer that  
25 question?

1           A.     I'm sorry.

2                   THE COURT:   I think the question was whether  
3 he was retiring.

4                   MR. BUTNER:   No.

5                   MR. SEARS:   Let me ask another question,  
6 Your Honor. Let me ask another question. If I might  
7 withdraw that one.

8                   THE COURT:   You may.

9                   MR. SEARS:   Whatever it might have been.

10                  THE COURT:   Thank you.

11                  MR. SEARS:   You would agree, wouldn't you,  
12 Mr. Echols, that this retiring agent's agreement has  
13 nothing to do with the concept of a book of business for  
14 Mr. Democker, would you?

15           A.     No, I would not agree with that.

16           Q.     And I mean specifically because there's no  
17 evidence that he signed it, correct?

18           A.     There is no evidence that he has signed an  
19 agreement, no.

20           Q.     And, therefore, it wouldn't have any -- there  
21 being no signed agreement that anyone has seen, there  
22 would be no applicability of any of the concepts connected  
23 with it to Mr. Democker's employment situation with UBS,  
24 right?

25           A.     I don't know how you can suggest that it does.

1 Q. If he didn't agree to do it and UBS didn't agree  
2 with him, it is as if it never happened; isn't that right?

3 A. Would you like an explanation?

4 Q. Can you answer that question?

5 A. No, I don't think I can.

6 Q. If you don't sign an agreement with somebody, you  
7 don't have an agreement, do you?

8 A. Mr. --

9 THE COURT: That's a different question.

10 THE WITNESS: I know, but it's like asking  
11 me if I've stopped beating my wife. No matter what I say,  
12 I have given the wrong answer.

13 THE COURT: Why don't you clarify,  
14 Mr. Sears. I think you were asking him questions that  
15 would raise the specter of getting into the contents of  
16 the exhibit.

17 MR. BUTNER: I do too, judge, and I ask that  
18 it be admitted.

19 THE COURT: And then he withdrew the  
20 question, Mr. Butner. So I will deny that request.

21 MR. SEARS: I am not only going to withdraw  
22 the question, I have no other questions for Mr. Echols  
23 and thank you very much.

24 THE COURT: Mr. Butner, redirect.

25 REDIRECT EXAMINATION

1 BY MR. BUTNER:

2 Q. In regard to the retiring -- well, let's just  
3 back up before we even get to that.

4 Mr. Echols, you were asked whether any  
5 documents had been -- any other document besides the  
6 financial affidavits had been submitted to the court under  
7 Mr. Democker's signature that you believed were fraudulent  
8 or contained fraudulent statements.

9 Were there any documents submitted by his  
10 attorney on his behalf that you believed contained  
11 fraudulent statements?

12 A. Yes.

13 MR. SEARS: Relevance.

14 THE COURT: Overruled. Overruled.

15 THE WITNESS: Yes.

16 MR. BUTNER: And what?

17 A. I believe you showed me a statement called  
18 "Respondent's Resolution Statement".

19 Q. Is it something that you used in doing your  
20 calculations?

21 A. It's something that we saw when we reviewed the  
22 calculations that really raised an eyebrow because we  
23 didn't understand how that figure could be possible.

24 Q. When Mr. Democker was submitting information  
25 concerning his financial condition to the court, did he

1 misrepresent it in other ways besides the financial  
2 affidavit?

3 A. Yeah, it was. Yes.

4 Q. Okay. How did he do that?

5 A. In the Respondent's Resolution Statement to the  
6 court --

7 MR. SEARS: Your Honor, I object. This is  
8 clearly beyond the scope of anything disclosed in the four  
9 page September 25th, 2009 report from Mr. Echols as a  
10 completely new matter. And it's beyond the scope of cross  
11 because the scope of cross was statements related to the  
12 signature of Mr. Democker; not matters submitted by his  
13 attorney.

14 MR. BUTNER: Judge, this particular document  
15 came from Anna Young's files. It was disclosed to the  
16 defense. Mr. Sears asked questions all the way around  
17 this document concerning Mr. Democker making  
18 representations concerning his financial condition to the  
19 court and dodged this document by using the words "under  
20 Mr. Democker's signature".

21 THE COURT: Overruled. You may proceed.

22 MR. BUTNER: Thank you.

23 THE WITNESS: I am looking at a document  
24 that we reviewed in which there was a figure presented to  
25 the court --

1 MR. SEARS: Sorry, Your Honor. This is not  
2 in evidence.

3 THE COURT: I will sustain that. Move onto  
4 a question.

5 MR. BUTNER: Mr. Echols, how much did Mr.  
6 Democker represent to the court he was making on a monthly  
7 gross basis during the pendency of the divorce?

8 A. \$13,000 a month.

9 Q. And who filed the pleading on his behalf?

10 A. Anna Young.

11 Q. And when was it filed?

12 A. 12th day of July 2007.

13 MR. SEARS: Your Honor, I object. The  
14 witness has read three times from a document not in  
15 evidence. It's reading from something in his own  
16 notebook.

17 THE COURT: Sustained.

18 MR. BUTNER: I guess we need to have that  
19 marked.

20 MR. SEARS: I move to strike his answers.

21 THE COURT: Stricken for the time being.

22 MR. BUTNER: What exhibit would that be?

23 THE CLERK: Number 143.

24 MR. BUTNER: Thank you.

25 MR. SEARS: Your Honor, may I ask some

1 questions on voir dire?

2 THE COURT: You may.

3 MR. SEARS: And is somebody going to mark  
4 this exhibit?

5 THE COURT: 143.

6 MR. BUTNER: 143.

7 THE COURT: You can refer to it as 143 for  
8 identification.

9 MR. SEARS: No. Is this 143?

10 MR. BUTNER: No. This is 143.

11 MR. SEARS: Can we staple it? And if I may  
12 approach, Your Honor.

13 THE COURT: You may.

14 VOIR DIRE EXAMINATION

15 BY MR. SEARS:

16 Q. Mr. Echols, this document is dated July 12th,  
17 2007, is that right?

18 A. I believe that's correct, yes.

19 Q. And it appears to be signed by Anna Young, Mr.  
20 Democker's divorce attorney, correct?

21 A. I believe so, yes.

22 Q. And where did you get this document?

23 A. From the records that were given to me by the  
24 Yavapai County Sheriff's Office.

25 Q. Do you have any evidence here today that Mr.

1 Democker was aware of this document?

2 A. No.

3 Q. Do you have any evidence that indicates that the  
4 information on this document, particularly the part that  
5 you highlighted in orange here on this gross income, is  
6 information that Mr. Democker provided his lawyer?

7 A. I don't have any knowledge of that.

8 Q. Have you interviewed Anna Young about this figure  
9 to determine the source of this information?

10 A. No, sir. I have not.

11 Q. You would agree that Mr. Democker did not sign  
12 this document?

13 A. I would agree with that.

14 MR. SEARS: Your Honor, relevance.

15 THE COURT: Hasn't been offered yet.

16 MR. BUTNER: I move for the admission of  
17 Exhibit 143, judge.

18 THE COURT: Sustained on foundational  
19 grounds.

20 MR. SEARS: Thank you.

21 REDIRECT EXAMINATION (CONTINUED)

22 BY MR. BUTNER:

23 Q. You were questioned about Exhibit Number 123, the  
24 retiring financial advisor agreement, and asked if either  
25 Mr. Democker or his attorney had concealed any documents

1 from Carol Kennedy or her attorney.

2 Do you recall that line of questioning from  
3 Mr. Sears?

4 A. Yes, sir.

5 Q. Were you aware of any documents that were  
6 concealed from Carol Kennedy or her attorney by Mr.  
7 Democker and his attorney?

8 A. I received a document from Anna Young's records  
9 and there was no corresponding document from Mr. Casalena  
10 or Mr. Fruge or from Carol. But the one record that I did  
11 receive from Anna Young's records had marked at the top:  
12 One copy only. Privileged. Do not disclose.

13 Q. And so was it your understanding that that  
14 particular document was concealed from Carol Kennedy and  
15 her attorney?

16 MR. SEARS: Objection, leading.

17 THE COURT: Sustained.

18 MR. BUTNER: I've asked you a really simple  
19 question, Mr. Echols. Are you aware of any documents that  
20 were concealed from Carol Kennedy and her attorney  
21 concerning Mr. Democker's book of business, for example?

22 A. This appears to be a document that was only in  
23 the hands of Anna Young, yes, and it appears that it was  
24 not given to opposing counsel or to Carol.

25 Q. And you offered an opinion earlier that this

1 Exhibit 123, this retiring financial advisor agreement,  
2 pertained to the book of business.

3 Do you recall saying that, sir?

4 A. Yes, sir.

5 MR. SEARS: Objection, the evidence in this  
6 case is that it was never signed.

7 THE COURT: Sustained.

8 MR. SEARS: Thank you.

9 MR. BUTNER: This document is not signed by  
10 anybody, is that correct?

11 A. No, sir.

12 Q. Would you explain how this document pertains to  
13 the book of business, sir?

14 MR. SEARS: Relevance. It's not in  
15 evidence.

16 THE COURT: Sustained.

17 MR. BUTNER: Judge, it is relevant and it  
18 pertains -- if you will allow the witness to answer, he  
19 can testify as to how it pertains to the book of business.

20 THE COURT: Well, I understand how it may  
21 pertain to the book of business based on the little bit  
22 that I know about it already. But it's not sign and never  
23 adopted.

24 So I don't see it as relevant to the issues  
25 that this hearing is concerned with.

1 MR. BUTNER: Mr. Echols, a retiring  
2 financial advisor agreement -- would you explain what your  
3 understanding is for the purpose of that kind of an  
4 agreement?

5 MR. SEARS: There is none in case. We --

6 THE COURT: Sustained.

7 MR. SEARS: Everyone admits that there's  
8 none in this case.

9 THE COURT: Sustained.

10 MR. BUTNER: Mr. Echols, did you find out at  
11 some point in time that, in fact, a financial advisor  
12 could actually receive payments for their book of business  
13 after they leave the brokerage?

14 A. Yes, sir.

15 MR. SEARS: Beyond the scope of cross.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, sir.

18 MR. BUTNER: What was it that you found out  
19 about it?

20 A. It is standard in the industry for people -- for  
21 financial advisors to receive money as they change firms  
22 and go to a new firm.

23 It is additionally equally that if the  
24 person at the end of his service to that particular  
25 brokerage firm decides that he's going to retire, instead

1 of going to another agency and taking that book of  
2 business and receiving that large sum we were talking  
3 about, they may exercise a retiring financial agreement  
4 with the firm that they are with in order for them to  
5 leave their book of business to other brokers that are  
6 there.

7 MR. SEARS: Same objection. I move to  
8 strike that answer. We are now trying to find another  
9 clever way to talk about the retiring agent agreement,  
10 which doesn't apply.

11 THE COURT: I will overrule that as far as  
12 what common practices in the industry is.

13 MR. BUTNER: Thanks, judge.

14 Now, this common practice in the industry,  
15 is this -- in terms of a retiring financial advisor -- is  
16 this a factor which accountants use to help value the book  
17 of business of a financial advisor?

18 MR. SEARS: Foundation, unless we can tie it  
19 to the agreement between Mr. Democker and UBS. It's  
20 irrelevant as to what other --

21 THE COURT: Sustained.

22 MR. BUTNER: You were asked questions about  
23 the back end of the agreement whereby Mr. Democker came to  
24 UBS.

25 Do you recall that?

1 A. Yes, sir.

2 Q. What was your understanding as to what the term  
3 "the back end" of that agreement referred to?

4 A. Well, the agreement that is exercised between a  
5 financial advisor and a new brokerage firm as they bring  
6 their business from one firm to another, typically has  
7 more than just one level of compensation to it.

8 They call the second levels of that usually  
9 the back end side. And in Mr. Democker's agreement, he  
10 had several back end clauses to his letter of  
11 understanding.

12 Q. Would you give us an example of one of them,  
13 first of all?

14 A. He had an opportunity after 14 months of being  
15 with UBS, to the extent that his gross production exceeded  
16 his previous 12-month trailing average from A.G. Edwards  
17 in this case, he could receive additional compensation  
18 based on the amount of his production above that level.

19 Q. And did, in fact, Mr. Democker receive additional  
20 compensation?

21 A. Yes, sir. He did.

22 Q. And what was the form of that compensation?

23 A. An additional employee forgivable loan. Cash up  
24 front with an ability to have that recognized as revenue  
25 over the following five years.

1 Q. And so how was it that he got this second  
2 employee forgivable loan?

3 A. At the end of 14 months his production for the  
4 highest 12 months with UBS was greater than the trailing  
5 12 months that he brought with him from A.G. Edwards.

6 Q. So did that show that he was bringing his book of  
7 business with him, so to speak?

8 A. Within the first year, yes.

9 Q. And how about in the second year?

10 A. There was another back end agreement that if, in  
11 fact, after -- it was either 24 or 28 months -- the same  
12 type of calculation would be made and if, in fact, it had  
13 increased above the level of the second loan, there would  
14 be an additional loan and an additional compensation.

15 Q. And by the end of 2007 had Mr. Democker brought  
16 with him the same amount of assets that he was managing or  
17 more when he was at A.G. Edwards?

18 MR. SEARS: Object to the form of the  
19 question. There's been no evidence whatsoever that Mr.  
20 Democker brought any assets with him. That's the witness'  
21 testimony.

22 THE COURT: Overruled.

23 THE WITNESS: Yes. In fact, after the first  
24 twelve months, he received his first back side loan and  
25 subsequently after that, he also received the deferred

1 compensation that he lost leaving A.G. Edwards as a result  
2 of him meeting that production level after the first year.

3 MR. BUTNER: In fact, in the year 2007; was  
4 that the best year he ever had?

5 A. In terms of production, yes.

6 Q. And then you talked about what happened with Mr.  
7 Democker in 2008. And you have scrutinized his Schedule  
8 C's, is that correct?

9 A. That's correct.

10 Q. And if I understood your testimony, in the first  
11 half of the year he was down a percentage, is that  
12 correct, sir?

13 A. Approximately 30 percent production, yes.

14 Q. And then going into the third quarter, you  
15 reviewed Schedule C's going through October of 2008, is  
16 that correct?

17 A. That's correct.

18 Q. And how did he do in that third quarter?

19 MR. SEARS: Relevance. Only issue in this  
20 case --

21 THE COURT: Sustained.

22 MR. BUTNER: Well, you have offered an  
23 opinion that Mr. Democker was in desperate financial  
24 circumstances as of the date of July 2nd of 2008, is that  
25 correct?

1 A. That's correct.

2 Q. And in reviewing his Schedule C's for the income  
3 that he was receiving from the second quarter and going  
4 into the third quarter of 2008; how was he doing?

5 MR. SEARS: Same objection.

6 THE COURT: It's kind of like those  
7 subsequent remedial measures. Sustained.

8 MR. BUTNER: Did you see any evidence, Mr.  
9 Echols, that Mr. Democker's circumstances had improved  
10 after the end of the first half of the year 2008?

11 A. No.

12 Q. Was his production up from the first half of the  
13 year 2008?

14 A. No, it was down.

15 MR. SEARS: Same objection. I move to  
16 strike.

17 THE COURT: Sustained.

18 MR. SEARS: Thank you.

19 THE COURT: We are two minutes to 5:00. Mr.  
20 Butner, are you going to finish with this witness or do we  
21 need to come back tomorrow?

22 MR. BUTNER: Could I have just a moment,  
23 judge?

24 THE COURT: Yeah. I have staff I borrowed  
25 from another judge.

1 MR. BUTNER: I know that. I don't have any  
2 further questions of this witness.

3 THE COURT: Do you wish him excused from the  
4 subpoena?

5 MR. BUTNER: Yes.

6 THE COURT: Thank you, Mr. Echols. Do you  
7 have any exhibits there? If you do, the bailiff will take  
8 them and ensure that we have all the exhibits back.

9 Are you intending to call additional  
10 witnesses tomorrow?

11 MR. BUTNER: No, judge.

12 THE COURT: So you are resting your part of  
13 the case?

14 MR. BUTNER: State rests at this time.

15 THE COURT: Defense going to be calling some  
16 witnesses, Mr. Sears?

17 MR. SEARS: Yes, Your Honor.

18 THE COURT: Can you be back with me at 9:30  
19 tomorrow morning?

20 MR. SEARS: That will work, yes.

21 THE COURT: We will resume tomorrow morning.

22 In as much as this is in the nature of a  
23 hearing pursuant to Rule Five, I suppose I could ask you  
24 to do some offer at this point. However, I will simply  
25 defer that since I am, again, borrowing the court

1 reporter. I will defer that until the morning and you can  
2 make what record you wish to in the morning concerning  
3 that.

4 We will resume at 9:30.

5 (That completes the proceedings for this  
6 date.)

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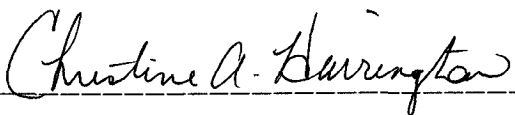
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CHRISTINE ANNE HARRINGTON

AZ CR#50128

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I, CHRISTINE ANNE HARRINGTON, having been  
duly appointed as official court reporter herein, do  
hereby certify that the foregoing pages numbered 1 through  
143 inclusive constitute a full, true and accurate  
transcript of all proceedings had in the above matter, all  
done to the best of my skill and ability.

  
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CHRISTINE ANNE HARRINGTON

CERTIFIED REPORTER

ARIZONA CR #50128